

A Treatise OF GAVELKIND, Both Name and Thing.

Shewing the true *Etymologie* and *Derivation*
of the one, the *Nature*, *Antiquity*,
and *Original* of the other.

With sundry emergent Observations, both
pleasant and profitable to be known of Kentish-men
and others, especially such as are studious,
either of the ancient Custome, or
the Common Law of this
Kingdome.

By
(A well-willer to both)
William Somner.

*Vulg. 2. Geo. g.
Fælix qui potuit rerum cognoscere causas.*

Crane. lib. 2. Metrop. 9.

Nemo sibi blanditur de auctoritate veterum, quibus et si fabula difflicuerunt, non tamen habebant unde falsitatem earum coarguere possent. Sed nostra aetas cibrescentibus literarum monumentis, maxime excusabilis turper est in fabulis scientes, prudentesque permanere.

LONDON.

Printed by R. and W. Leybourn, for the Author, and are to be sold by
John Crooke at the Ship, and Daniel White at the Seven
Stars in St. Pauls Church-yard. 1660.

ATLAS GALERIEN

7
Sister Name and Thing
Sister Name and Thing
of the old place Name. Capital
has Original of the other

W. J. H. Purdy, Secretary of the Commonwealth of Massachusetts, Boston
and others, officially known as the基金份额
officer of the Worcester County or
the Commonwealth of Massachusetts

(*Indoor Follow-down*)

www.wiley.com

卷之三

“*What is the best way to learn English? I have been trying to learn English for a long time, but I still don't feel like I'm making progress.*

Quesada, Colombia

ପରିବାରକୁ ଆମେ ଏହାରେ ଯେତେ କଥା କହିଲୁ ନାହିଁ ।

Page 10

Succès du 22 Janvier à l'opéra de Paris, 1900.

1732
Jan 14
B 2



TO THE
Right Reverend Father in God,

JOHN WARNER,
D. D. Lord Bishop of Rochester.

My Lord;

 Such is the largenesse of your charitable heart, so great and tender the compassion lodged in your pious breast, towards those (especially) who for their good affection unto Monarchy in the State, and Prelacy in the Church; for their fidelity and loyalty to the Prince, their Father, and their conformity and duty to the Church, their Mother, (a pair of new-devised mortal sins) are forced to par-

The Epistle

take with both in the miseries and martyrs of the eleventh persecution: that many and most thank-worthy and obliging have the favours and refreshments been, which my self (amongst a multitude of poor Clergy-men, with their widows and others in these unhappy times, suffering and almost sinking under the heavie pressures and barbarous plunderings of a sort of cruel and unreasonable men, mouthing and pretending nothing more than the reformating of abuses, but minding and practising nothing else but the abuse and overthrow of a well-absolved Reformation) have for many years together constantly received from your Lordship.

And albeit your Lordship hath drank of the same cup, and suffered with us in the same fate, and on the same score, as to all your ecclesiastical estate and fortunes: yet great, very great, notwithstanding hath the shelter and succour been which we have found from your Lordship (thanks to God, fairly blest the whitest with secular acquests and temporal demeasnes) against that

Dedicatory.

that hideous and impetuous storm (of rapine and ruine) which of late years, like a violent Hurricane, hath born down before it a woful number of poor Innocents, guilty (many of them) of no crime, but of (what sober times never accounted any, nay, even had in honour and respect) that of their prelaticals, either function or relation: and (to the shame of the Reformation) much worse used in these dayes of its maturity, than were the Monks and Friars in the morning and infancie thereof; who, for their security and preservation from that penury and beggery to which their expulsion would otherwise inevitably have exposed them, had (even by the dictates of humanity) accordin gto their severall, whether higher or lower condition in their Cloisters, a convenient and competent annual stipend allotted them by the State for life: whereas in these dayes (as if humanity were as indeed it is full out, as Antichristian as Episcopacie, and therefore cast off with it:) no such care, no such course is thought on for some thousands of

The Epistle

persons depending on the Hierarchy, to
keep them and theirs, cast (many of them)
out of house and home, from starving in
the streets.

Much, in short, am I bound to blesse
both God and your Lorship for a good
share and proportion of that both counte-
nance and maintenance which in these ca-
lamitous and wretched times have holpen
to keep and buoy up my fainting and sink-
ing spirirs, and fortifie my drooping and
discomposed mind against despondencie
and impatience.

In thankful acknowledgement, and just
celebration, therefore of these your Lord-
ships pious and charitable dispensations,
which I can no other way requite, but (as
your Beadsman) by my prayers for you to
him, who (to the lasting honour of your
sacred, though despised, Order, and the
shame and grief of your & its adversaries)
hath made your Lordship both able and
willing to become so great an example of
piety and goodnesse: I have laid hold on
that opportunity for proclaiming this truth

to

Dedicatory.

to the world, (without offence, I hope, to your Lordships singular modesty, at once both silencing your tongue to all Pharisaic ostentation, and stopping your ear to all Parasitical adulation) which the publishing of the present small Treatise hath put into my hands: for the commending whereof to your Lordships patronage, I have not wanted the concurrence of other good inducements. As (first) that thereby your Lordship might have some account of the employment of my talent, and my spending a good part of that time (my Saxon Dictionary taking up the rest) wherein you have been pleased to make me (an exaudited Register) one among the many objects of your beneficence and charity. Secondly, that the subject and argument of this work lies much in your Lordships way: your pastoral charge (of right) intercommoning with it in a good part of the same scene and circuit. A third may be that benigne aspect and favourable eye which your

The Epistle

Lordship hath already cast, aswell on the work as the Authour ; by giving it your approbation, and him your encouragement to publish it, I shall spare to add more reasons.

And now congratulating to my self the happiness of this opportunity, to discharge some part of that great debt (of thankfulness) which I do, and shall ever owe your Lordship for all your signal favours, I humbly crave both your Lordships good acceptance of so mean a return, and that by your Lordships licence and good liking, the present Treatise may have the honour to passe into common view under your Lordships name : A name indeed (for the great learning, piety, prudence and charity of the Bearer) of so much honour and price, and so worthy of eternal memory, as it deserves to lead up, and stand in the front of a more large, elaborate, and honourable work. Where hoping I may one day find it, I beg, together with your Lordships pardon for the boldness of this address,

Dedicatory.

address, that blessing which from such a Reverend Father of our Church, none of her true sons but highly values, and yet none more than.

(Right Reverend)

Your Lordships in all humble

duty and observance,

William Somner.

22

Reverend Father of our Captain, now at
Appleton, near Philadelphia, who has
performed more than any man I ever saw
in the world, and has done much
service to his country.

(Early American)

William Brewster
of Boston, Massachusetts,
has written a book
entitled "The Wild
Birds of New England".

William Brewster

THE PREFACE

Courteous Reader,

I is now full eighteen years since
by solemne promise, I became in-
gaged to my Country-men, upon
their good acceptance of certain
of my labours, in behalfe of our City, where-
with I then presented them, to proceed to
the same, or some other such like under-
king for the County ; a thing, which as I
then really intended, so have I not since
wanted that encouragement for it from the
better sort (expressed by their courteous ac-
ceptation of those my former labours) which
I could expect. But being soon after (proh-
dolor !) overtaken by that impetuous storm
(of civil war) not yet quite blown over, paus-
ing the distraction, and threatening the de-
struction of this once renowned Kingdome, I
was necessitated to betake my self to other
thoughts, chiefly how I might secure my self
against the fury, in warding off the danger.

The Preface.

of the present storm; being not able, I confess, to reach to that high pitch of sedulity and magnanimity, both in this kind to which the Grecian Socrates is said to have attained, whose thoughts were ever running on his book; insomuch, as but the very next night before he was to suffer death (regardlesse of his so neer approaching danger, able to indispose the mind, discourage the industry, and shake the constancie of any common spirit) he was desirous to learn Musick, because (saith the Story) he would die still learning somewhat. Being therefore thus diverted, and utterly for the time discomposed for the performance of my promise, I hope not onely to be excused of my Countrymen for (what had not else been hitherto delayed) my County-undertaking, but also to obtain of them yet further respite, in hope of a better opportunity, for the discharge of that debt. For my more easie purchasing whereof at their hands, and that they and others may perceive, that I have not been altogether idle all this while; pitching in my thoughts upon our Kentish Custome of

Gavel-

The Preface.

Gavelkynd, and being not unfurnished of matter in the progresse of my studie gleaned and gathered from old Records, enabling me, with the help of that little skill I have attained in the Savon tongue (to the study whereof I was encouraged by my precious friend and ever-honoured Mecenas, Dr. Casaubon, as it elsewhere by himself truly averred) to some more than vulgar discourse thereof; as a specimen and earnest of my further intentions for the County, I betook my self at spare hours to the perusal, resolving on the publication, of those collected notes and notions, disposing them so, that as they have to satisfaction informed me in the points proposed, so they may be of like use to others, willing to bestow their pains, and lay aside all prejudice in the perusal of them,

Kent, I considered, had been far and neer long celebrated for her Gavelkynd, though not so known either at home or abroad, whether in point of etymologie, or properties, (that especially of Partition, rendering it so incomparably famous throughout the Kingdome) as truth wold. To wipe off therefore

force that induceth us to sin, which time affecteth
 all. (that is, the corruption of our nature, which we
 tradiſt to it.) I have in the preſent disgoſt
 laboured chiefly to ſet forth, I conſciouſ-
 ly, the thirteenth ſong; and, deſeruation of the
 man, for the understanding of which (as) makes
 vnbien, the proportionable, especially, be-
 ikeſtimated, do proceed, for the better judging
 of the nature of it, according to that, and
 propounded to my ſelf in all my reſearches,
 which is to know things, not ſo much in
 their preſent or primitive ſtate, as make in
 themſelves, than effectually. Thus given
 (ſaith the (b) Philosopher) vnum quod-
 que ſcire arbitramur, cu[m] q[uod] u[er]o dicitur. Ex
 principiis cognoscimus o[pt]imisq[ue] i[n] i[n]q[ui]d
 By the proceſſe and progeſtion, of the ar-
 gument, having a firme and peremptor[i]al mea-
 ſure, of not to ſteal, yet ſtill ſome impu-
 dios, and turkowid, out of the ſuburb Bo-
 land and Bochland, ſo of the Feudal Feu-
 dum and Allodium, (a pair of moatles, the
 latter, that haue long and much perplexed
 many prime vpon familes to diſpute and
 ſtill out their true and proper derivations,

The Preface.

to the occasion of great varieties in the point, each man abounding in his own, and that, for the most part, a different and singular sense) I thought it not amisse to make one in the number of such Etymologists, and althoough with singularity, I confess, and dissent from all the rest, yet perhaps so much to the purpose (absit jactantia dictis!) as, if not to hit the mark, yet at least to come so neer it as few before have done. Alike singular, as both here, and before in the derivation of Gavelkynd, so afterwards I may be found in that of Socage, yet I trust with so much truth, and that so fully evidenced, as will serve, I hope, to render me with the sober and ingenuous, worthy, if not of thanks, yet of excuse and pardon, if they differ in opinion from me.

Here also (good Reader) be advertised, that whereas, by occasion of our discourse in the third Proposition, concerning the Partition-property in Gavelkynd, I had obiter, or incidently, made some mention of the Writ, De rationabili parte bonorum, some-

The Preface.

time (by means of that partition mentioned in the old Kentish Customal) obtaining, and now again (if the endeavours of some may take effect) reviving in this County; it came afterwards into my mind to think it would not be impertinent to the present Discourse, somewhat further to enlarge in that particular: that by enquiry made into the Antiquity, and tracing the progresse of the Partition intended by this Writ from its first birth until its full growth, we might be the better able to give judgment, & make the more probable conjecture of the present validity or invalidity thereof. My discoveries therefore being made and communicated to some judicious friends, not without their acceptance and my encouragement for publication, I have adventured to add them at the end of that third Proposition, pag. 91.

As for my thwarting the common opinion, concerning our composition with the Norman Conquerour, and the consequents of it, I offer no Apologie here, as having already made it in the proper place, and that, I also trust,

The Preface.

trust, so fully, as I may well expect to be excused of it here. In sum, loving truth (the end of all Science) for it self, and altogether unbiassed with any by-respects, whether of vain glory, singularity, or the like, I have made it my constant endeavour in what is here proposed and published, that Truth alone (than which saith the Philosopher, ^{Idem 2. Metaphys.} nothing is sweeter, nothing more precious) might triumph over Falshood, Antiquity over Novelty. If hereby I have done either of them any right, or any friends any pleasure, as the chiefest reward I expect for all, I shall desire that such a measure of respect may be vouchsafed, as to those old Records from whence the chief materials in this structure have been taken, so to that ancient learning which hath contributed fitting tools wherewith to work the same materials, and fit them for that use, as may secure and rescue both (uncapable of other recompence) from that scorn, neglect and contempt in the dayes of so much novelty so freely cast upon them, since by falling into

The Preface.

some bands, so good an improvement may be made of them for the publike.

I may perchance (at first sight, at least) be thought too bold with the common Law-yers, too busie in their Common-wealth, too much meddling in matters of their peculiar Science; yet no otherwise, I hope, than that they and their friends may be willing to excuse me. I am one that honour their profession, and have here done or said nothing out of opposition; my intent being onely in my way to do them service, and their profession right, by holding forth to publike view some Antiquities tending at once to the satisfaction of the one, and illustration of the other. For which purpose I have by me some other things in a readinesse for the publike, and which shall not (God willing) much longer be retarded, in case these my present endeavours (as my past have done) meet with any proportionable encouragement; and the times permit, by the continuall of our Countys peace, (Peace, I say, that mo-
ther of Arts:) which with an enlarge-
ment

The Preface.

ment and establishment of that blessing thoroughout the three Kingdoms, is the subject of his daily devotions, who (not for any present, or private ends or interest of his own, like a base self-seeker; but for the good and welfare of the Publike and Posterity, like a true Patriot:) doth cordially wish and long for (what he is not out of hope to see) the re-establishment of Church and State, and the prosperty of both, under (their wonted and wanted nursing Fathers) the Prince and the Prelate: untill when, and the stream of governments return into its old chanel, he cannot but look upon those men with wonder and pity, who abuse both themselves and others, with the fond and sencelesse hopes and expectation (so often disappointed) of any lasting peace or settled times: whereas indeed nothing but feuds and factious, schisms and fractious, animosities and enmities, minings and counterminings, civil dissentions and foreign invasions; in a word, turnings and overturnings, can in reason be expected, untill (as the Prophet

The Preface.

Ezek.21.17. hath it) become, whose (undoubted) right
it is.

Now that righteous Judge of all the world, who helpeth those to right which suffer wrong ; he by whom alone Kings reign ; he who by his holy Apostle bath both instructed and enjoyned us to pray, as for all men in general, so especially for Kings ; he who hath hitherto so miraculously preserved him, in his person from violence, in his morals from deboshment, and in his Religion from apostacie ; in mercie both to King and Kingdome, continue his gracious hand of preservation over him, and in order to his happy coming, so dispose the indisposed hearts of his seduced people, to a cheerful and a speedy reception of him, and loyal affection to him, that after all these turnings and overturnings, both Prince and People, without further hostility and effusion of bloud, may return to what is either's right : he recovering their subjection and duty, they his protection and clemencie, and both rejoicing in each others felicity : that so (all injuries on both

parts

The Preface.

parts forgiven and forgotten, all fears and jealousies, all mis-understandings and prejudices, for ever laid aside) with righteousness and peace they may again meet, and sweetly greet, kisse, caresse, indear and espouse each other, and become as those whom God himself hath joyn'd together, by man or Devil never to be separated. So (in hope of every good Patriots Amen :) prayes (courteous Reader)

Thine humble Servant,

William Somner.

huius unde dicitur inde quod huius scriptum est dicitur
ad regnum huius regnaturum est eis huius regnaturum est
in seculum et deinceps (Ad hanc regem dicitur) dicitur
huius regni nomen regnum dei et regnum huius
et regnum regnum regnum et regnum regnum regnum
modus regni ut regnum huius regni dicitur regnum
ut nomen regni regnum regnum regnum regnum regnum
(et regnum regnum regnum regnum regnum regnum regnum)
regnum (et nomen regnum regnum regnum regnum regnum regnum regnum)

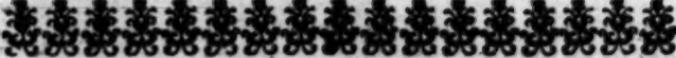
propositio ab aliis non videtur

To expedite such (in their perusal of this work) as are ignorant, but studious, of the *Saxon Language*, the Authour (although he have but lately set forth a *Saxon Dictionary*) hath thought it very fit here to prefix the *Saxon Alphabet and Abbreviations.*

a b c d e f g h i k l m n o p q r s t u w x y z.
a b c d e f g h i k l m n o p q r s t u w x y z.

th th that and

þ ð þ þ



Errata.

PAg. 4. lin. 21. and customary. lin. 22. yeelded it. p. 18.
l. 8. Biens. p. 21. l. 1. after *Consuetudo*. l. 18. Snav. l. 27.
Shorham. p. 24. l. 18. Oale-gavel. p. 25. l. 2. Clyve. l. 16.
Chartbam. p. 26. l. 20. of it in that composition. p. 27. l. 5.
rents and services. p. 29. l. 7. find it in. l. 28. to the Tenant,
better. l. 31. Fremfeld. p. 30. l. 27. not alienable. p. 31. l. 21.
Gamelletam. l. 25. Hervicus. p. 34. l. 10. rather say. l. 14.
ma'am. l. 18. firmam. l. 20. construe. p. 36. l. 2. Counties. p. 37.
l. 9. the which word. p. 38. l. 18. populcunde. *ibid.* eophcunde.
l. 27. of former times. p. 39. l. 13. Herlewinum. p. 55. l. 21. of
times. p. 58. l. 14. aquivalentem. p. 72. l. 4. received. p. 83. l.
ult. construe it thus. p. 96. l. 2. Salvo. p. 117. l. 4. Drosmannus.
p. 119. l. 8. Demesne. p. 123. l. 6. those and succeeding. p. 142.
in marg. L. 1. ff. si ag. p. 162. l. 24. And as it is. p. 175. l. 1.
priori. *ibid. in marg.* Burgor. apud Scotos.

Some literal and such like other smaller faults there are, be-
sides mis-pointings; which being as easily amended as obser-
ved, are therefore here pretermitted.





G A V E L K Y N D.



Mong the many singularities of Kent, that of so much note, both at home and abroad, commonly called *Gavelkynd*, may seem to bear away the bell from all the rest, as being indeed a property of that eminent singularity in the Kentishmens possessions, so generally in a manner, from great antiquity, over-spreading that County, as England at this day cannot shew her fellow in that particular; yet so unhappy the whilst are both Kentish-men and others, in the right understanding both of name and thing, that although it be the daily subject of every mans discourse, even of all professions, yet remains it hitherto, both in the one respect and in the other, so obscure, and in so much want of further illustration to make it known, as if never yet by any seriously considered of. Purposing therefore to contribute my best assistance towards a right and full discovery; in order therunto, and for my more methodical proceeding,

B.

I shall

I shall branch out my discourse into these five following heads or propositions : viz.

1. The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.
2. The nature of *Gavelkynd*-land in point of partition.
3. The antiquity of *Gavelkynd* custome, in point especially of partition, and why more general in Kent than elsewhere.
4. Whether *Gavelkynd* be properly a Tenure, or a Custome ; and if a Custome, whether inhere-
tent in the land or not.
5. Whether before the Statute of Wills (32 and 34
Hen. 8.) *Gavelkynd*-land in Kent were devile-
able, or not.

PROPOSITION I.

The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.

 O begin with the first : (the true Etymologie and derivation of the name, &c.) By the common and received opinion of these dayes, obvious and easie to be found, both in the writings and discourses of Kentish-men and others, this Custome (as commonly called) owes its name and original to the nature of the land in point of descent. To consult (for instance) a few of the mudi-

tude of printed opinions looking that way, collected from the most eminent of our modern and late Writers, as well Antiquaries as Lawyers, and intending to steer a retrograde course in this re-search, I shall begin with one of the latest, Sir Edward Coke, who in his Notes, or Illustrations upon *Littleton*, tit. Villenage, Sect. 210. verb. en *Gavelkinde*, glosseth the text thus: *Gave all kynd: for (saith he) this Custome giveth to all the sons alike.* Not long before him, another learned Knight and famous Antiquary, taking the word to expound in his Glossary of antiquated words, saith, that it is termed *Gavelkynd*, either, *Quasi debitum vel tributum siboli, pueris, generi*, i. e. as it were of right belonging and given (intimated in the two first syllables, *gafel*, or *gafol*:) to the issue, children, or *kynd*, (signified by the last, *cyn*, or *kynd*:) Or else secondly (saith he) from *giv-eal-cyn*, i. e. given to all the next in kindred. *Verstegan* (to ascend in our gradation one step higher) censureth the word of corruption, saying, that it is corruptly termed *Gavelkynd*, for *Give all kynd*, which after him is as much to say, as, Give each child his part. From whom Mr. Cambden differs as little in time, as in opinion, when he saith it is called *Gavelkynd*, that is, saith he, *give all kynne*. Before all these, Mr. Lambard, (the first that undertook the etymologie, and whom, beside the former, * Judge Dodderidge, * Dr. Cowell, the Authour of the New Terms of Law, and many more, *longo agmine*, are known to follow) in his explication of Saxon words prefixed to his *Archaison*, verb. *Terra ex scripto*, is clear for the derivation of the word from the Saxon *gipe-eal-cyn*: *Credo*(saith he) *wi* *terra illa Gavelkyn*, *quasi gipe-eal-cyn*,

Sir Hen. Spelman, in voce
Gavelatum.

Britannia, in
Kent.

* The English
Lawyer, p. 73.
* Interpreter,
in voce.

Perambul. p. 18.

id est, omnibus cognatione proximis data, dicatur. But afterwards, (as if upon second thoughts altered in his opinion) he coupleth this derivation with a second, and so at length is found to share his opinion of the words original between two conjectures, grounded both upon the nature of the land ; the one in point of Descent, the other of Rent and Services. In reference to the former of which, he saith, that, *Therefore the land was called either Gavelkyn, in meaning, give all kyn, because it was given to all the next in one line of kinred ; or, give all kynd, that is, to all the male children : for kind (saith he) in Datch signifieth yet a male child.* And in relation to the latter, he saith, that, *It is well known, that as Knights-Service land required the presence of the Tenant in warfare, and battell abroad : for his land (being of Socage tenure) commanded his attendance at the plough, and other the Lords affars of husbandry at home : the one by manhood defending the Lords life and person, the other by industry maintaining with rent, corn and vi-*

~~old~~ *customary payment of works, the Saxons called ȝafol, and thereof (as I think) they named the land that yeelded it ȝafol et c. or ȝafolc yns, that is to say, Land lesson for rent, or of the kind to yeild ren', &c.* The Authour (I confess) modestly leaves it free to the Reader to receive either of these conjectures, or to refuse both, as it shall best like him : but the former of the two, being *prima facie*, of a more plausible sound and allusion than the other, (an advantage very considerable with most men, whose guidance notwithstanding is not alwayes to be followed :) and that having gotten the start of her fellow in time, hath not fail'd to keep it ever

ever since, having proved the more acceptable of the twain, and by this time found so many followers, and those, like the first Author, of so great credit, as that whosoever shall contradict the one, or dispute the other, can do neither without exceeding prejudice; so difficult a lesson it is with some to unlearn, (a) whose minds are as hardly weaned from an opinion which their fancie hath once approved, as others are from an habit or a custome, which if inveterate and long settled, though corrupt and vicious, is very hardly left off, and laid aside. Yet, as the Common Law (b) determines of a Custome, that if the rise, the original thereof can so be traced, as it can appear that it first began within time of memory, it is no Custome, nor shall obtain or prevail as a Custome; so in case, by tracing the present derivation to the well-head, I shall shew, together with the time, the error of its first original, not to be salv'd by long tract of time, (for, *Quod ab initio non fit de Reg. valuit, tractu temporis non convalescit:*) I trust I shall not fail, nor fall short of what mine endeavours drive at in this matter; the weaning (I mean) of sober and judicious minds from an opinion so erroneous and ungrounded as this, I doubt not, upon trial, shall appear to be, though thus long continued, and in it self specious and plausible enough. However, being convinced in mine own judgement of the error, that I may not seem to swallow it for company, to the prejudice of truth, for that (I say) if for no other reason, I have resolved to protest against it: and yet, not to seem singularly affected without a cause, I shall not do it by a bare denial or dissent, as he that thought it sufficient for Bellarmine's confutation to give him the

(a) See the addition to Dr. Casaubon's Treatise of Use and Custome.

(b) See Sir Ed. Coke, Institut. part. 1.

fol. 115. a.

Jur. I. quod ab initio.

lie, but by representing withall my inducements thereunto; I hope to put the matter out of doubt, that I have studied the Readers satisfaction herein as well as

(c) Duarenus; my own, by a learned mans (c) example, whose words Comment. in Tit. de Patis, P.49. 2.

in a like case, as very apposite in this, I shall here borrow for the close of my Apologie: *Esi mi non lateas,*
(saith he) quam lubrica, plonaque discriminis sit, que
per sa secula, tot homines eruditu uno consensu probarunt,
rejicere velle, rationes tamen eas in medium adducere vi-
sum est, quibus adductu hanc interpretationem damnare
ausus sum. (Nor is this (I take it) magnō contain nūgā
 agere; the discovery and refutation of popular er-
 rōtis having been a task for many worthy pens, in ca-
 ses of as small concerment as this perhaps may seem to
 be. To the matter then.

Whether the name of *Gavelkynd* was at first im-
 posed with, or in respect to the nature of the land, in
 point of descent, or not, is indeed the matter in que-
 stion. The common opinion (I confess) affirms it,
 wherewith joyning issue in the negative, I shall endea-
 vor to refute it by a double proposition; one nega-
 tive, shewing that this is a wrong, and mistaken; the
 other positive, or affirmative, declaring what is the
 right and genuine construction of the term.

As for the former, though it carry with it a seem-
 ing allusion to *Gavelkynd* in sound, yet if we look ad-
 visedly into the true nature of it, we may, and perad-
 venture must, conclude the etymologic from *Gavel-*
all cyn, Give all kynd, of the like, unnatural at the least,
 and far fetcht, if not violently forc'd. For first, ad-
 mitting *Kind* to signify a male child in the Dutch or
 Belgick tongue; as it doth not more than a female,
being

being a word common to children of either Sex. (which indeed with them, as with our Ancestors, the English-Saxons, is of that (d) signification:) yet is not this kind of land so restrained in point of descent, only to the males, but that (as in the case of land descendible at the Common Law,) the females in their default, that is, where the males are wanting, are capable of succession to it, and in the same way of partition with the males. Nay, is any of the sons dead in the fathers lifetime, leaving a daughter behind him, such daughter shall divide with her uncles in this land. What then shall we admitt kynd to signify the issue, be it male or female? as indeed it doth either, coming of the Saxon, or old English, cennan, or cennian, *parere*, to bring forth, whence with them the word or participle *huncenend*, for the first-begotten, or *first-born*; *ascendens*, for the only begotten; *eopdeens*, *terrigena*, one that is born, or bred of the earth; yet is not this land so tied to the issue, but that in default thereof, i.e. where that is wanting, such as be in the transversal of collateral line (as in other lands descendible at the Common Law,) may and do inherit it: as (for instance) when one brother dieth without issue, all the other brethren may and do inherit, as doth their respective issue too, in case of their default, *pro presentatione*, but with this restriction in the nephews, that succeeding with their uncle, viz; that the descent is then *in stirpes*, not *in capita*. Nevertheless, it goeth not as the Irish (e) *Gavelkynd*, to all the males of the same lineage, (for in this, as in other inheritances, *propinquior excludit* (f) *propinquum*) nor yet neither to all the next in one line of kindred, as they pretend that

(d) See Kilianus Diction. verb, *Krechte*.

Lamb. Per amb. p. 547.

Vid. Dictionary. nar. nofr. Abbr. Saxon. m. vole.

(e) Davies Reports, Le Irish Cust de Gavelkind, fol. 49.

(f) Bratton de acquir. rer. dominio, fol. 54 a.

are

are for gift-eal-cyn, taking cyn to signify kindred, as indeed it doth, for then brothers and sisters both, being alike near in degree, should equally inherit, a thing it seems allowed by the old German custome, wit-

(g) De morib. Germanor. (g) Tacitus; *Hæredes successoresque sui cuique liberi*, &c. not restraining the suc-

(b) 1. inter filios. 1. famil. hercif. 1. si quis à liberis, s. de lib. sg. nosc. 1. si major. in fl. 1. communii divid.

(i) Lib. r. Feud. tit. 4. Parag. 3. & ibi Rotom.

(k) Ll. Hen. 1. c. 70. Glazv. li. 7. c. 3. Bras. fol 65. a.

(l) And another in the Appendix, Scriptura 9.

cession to the male issue, as neither doth the (b) Civil Law:) whereas we know, that as by the (i) Feudal Customes abroad, where males are, the females are excluded from succession, so by the Common Law of (k) England, women (or females) shall not partake with males, according to that rule laid down in the Statute called *Prerogativa Regis*, cap. 16. *Famina non participabunt cum masculo*, which (by the way) is understood onely of such as are in equal degree. But doth cyn or kynd here intend and denote a mans issue, the Gavelkynderschildren? What may we say then to a conveyance of land in *Gavelkynd* to a Guild, or Corporation, aggregate of many, suppose an Hospital, (as an instance of that nature shall be produced)

(l) by and by:) they are a dead hand, how then is the etymologie in that case justified? Where's the kynd, the parties issue here, to make good the derivation? But since, by occasion, mention is made of such a gift, or conveyance, to strangers from the proper issue or heirs, let me thus far further adde, that in case it be called *Gavelkynd*, from *debitum vel tributum soli*, i.e. due or given to the issue, as some are of opinion, how comes it then to passe, that, as before the Statute of Wills, *Gavelkynd* land might by deed, or other lawful conveyance (and that *Domino*, in this case *incon-*
sidero, and *iriusa* too, contrary to the nature of what with,

with the Feudists is properly termed (*m*) *Fees* :) be (*m*) See *Val-*
 freely given, or sold away from the heir by the custom *teim, de Peudi-*
 to a meer stranger, (contrary to the old Common Law
 of (*n*) England, except in some few cases, as in *lib. i. c. 8. nu. 37.*
Frankalmoigne, or in marriage with a mans daughter,
 a reasonable part might be given, with some limitati-
 ons and distinctions between Land of Inheritance and
 Purchase :) as now since the Statute of Wills, (if not
 before, as some of late seek to perswade us, a matter
 which I shall reserve (*o*) *altiori indagini* :) it may be, (*o*) See the 7
 and daily is by devise of will and testament, How is
 the next heirs right to this land preserved, when there
 is that freedome of giving, or devising it away ? Or
 how can this liberty & that etymologic consist ? Yet
 further, doth not Mr. *Lambard* somewhere (*p*) say, (*p*) *Perambul-*
 that no *Gavelkynd* partition could be challenged, but *P. 544.*
 onely where the custome of division had prevailed,
 and that *Gavelkynd* was not tried by the manner of
 Socage-services, but onely by the touch of some for-
 mer partition ? If so, no land then could properly be
 called *Gavelkynd*, wherein this custome of partition
 had not yet obtained : what shall then be thought of
 those new created Tenures in *Gavelkynd*, whereof un-
 til the Statute of (*q*) *Quia emptores terrarum*, exam-
 ples are very obvious and frequent in the old Records
 both of the Cathedral at Canterbury, and of the
 neighbour Abbey of St. *Augustines*, and elsewhere,
 affording many ancient grants of land in *Gavelkynd* ?
 to what original shall the name there be referred ?
 to any customable partition ? nothing lesse : for
 where can that be found in *Gavelkynd*-land of novel
 Tenure, for want of that competencie of precursory

(*q*) *Anno 13.*
Edw. I.

time of them necessarily presupposed (so frame the custome in) who conceive the name taken from such accustomable partition? Moreover, if partition were the thing that gave name to *Gavelkynd*, then should all partible land wheresoever be so called: but there is in parts abroad (out of Kent) partible land not called *Gavelkynd*. Ergo, &c. For the assumption see the Stat. 32. Hen. 8. cap. 29. purposely made to change the customary descent of the land of Osweldebeck Soke or Lordship in Nottingham-shire. And what doth (r) Bracton intimate lessc in his *sicut de Gavelkynd, vel alibi ubi terra est paribilibus ratione terra?* Adde hereunto, that the word, as to the main part of it, *Gavel*, frequently occurs in the old records of some manours out of Kent, sometimes simply, but for the most in composition; for example, *Gavel-erth*, *Gavel-ate*, *Gavel-lond*, *Gavel-man*, *Gavel-swine*, *Gavel-wood*, *Gavel-red*, &c. (of which more anon.) And shall the same thing, (contrary to that rule of Law, l. i. ff. De serum permutatione) diverso jure censeri? For I suppose none will render it there (being out of Kent, and where no *Gavelkynd* partition taketh place) *Gife-eat*. Nor will this derivation any better stand with *Gavel*, where it helps to the composition of some words here used in Kent, in former times at least, besides that of *Gavelkynd*, such as are all or most part of those afore-remembred, to which I may adde *Gavel-rip*, *Gavel-ate*, *Gavel-sester*, *Gavel-bred*, *Gavel-bord*, *Gavel-timber*, *Gavel-corn*, *Gavel-refter*, &c. whereof also I shall intreat further by and by. Is it then (lastly) to be supposed, that the lands-meet descent in this kind to all the heirs alike, supposing a plurality of heirs, was all the

(r) Lib. 3.
1ol. 374.2.

the regard those Ancestours of ours had to sway and regulate their judgement by, to whom the name, the term, doth owe its first original? Was that in probability ground enough to satisfie them of the congruity and suitableness of the name to and with the nature of the thing named, as names we know should † be? *Vix † Convenit
rebus nominis
sepe suis.*

In brief then, to recollect what hath been said: 1. If females are capable of this succession as well as males, where the male issue faileth. 2. If collateral kinred are capable thereof as well as those in the descendent line, where such heirs are wanting, (in both which kinds *Gavelkynd* land differs not from that at the Common Law:) 3. If Corporations may hold land in *Gavelkynd*. 4. If such land may be passed away to meer strangers from the right heirs. 5. If none may properly be called *Gavelkynd*-land, where an accustomable partition hath not made way for it. 6. If there be partible land elsewhere (out of Kent) that is not called *Gavelkynd*. 7. If *Gavel* (the fore-part of the word) found in some Records of land out of Kent, and of others in Kent, will not bear the derivation of it from *Gife-eal*, without absurdity. 8. And lastly, if names are to be imposed with respect to the nature of what is (ſ) named, then is *Gavelkynd*, after these mens premised derivation, in some sort a very scant, narrow, and partial, in other a most incongruous and improper term to expresse the nature of the land by. Surely, there was somewhat more peculiar to *Gavelkynd*-land, and of more note and eminēcie in it, better serving to distinguish it from other kind of land, than this derivation of theirs seems to intimate, and which first gave

(ſ) *Nomina
cum re consen-
tiant, Plato
de Sapient.*

occasion to the imposition of that name upon it, which leads me to my other, the positive, or affirmative proposition, asserting the true sense and construction of the term, and shewing whence it was at first imposed, and afterwards continued.

Gafol, what
signifying.

Wherein I must confess, Mr. *Lembard* was as happy to go right in the latter of his two conjectures, as he was before unluckie to misse of the right in his former, yet in this passively unhappy though, that the former, through the advantages afore-mentioned, wholly took, and was accepted of all, whilst the latter was received and embraced of none: but no great marvel, since, whilst some, through ignorance could not judge of, others haply for company, would not question so plausible a derivation. But to the purpose.

To such as are any thing vext'd in Saxon monumets, *Gafol* is a word very obvious, but varied sometimes in the Dialect, as being written now *gafol*, anon *gauel*, here *gaful*, there *gafel*. I shall give you a few instances where it occurs, and in what sense. Tribute mentioned in the 17 of St. *Matthews* Gospel, verses 24, and 25, as also in the 22 of the same Evangelist, verses. 17 & 19, is in the Saxon Translation of the Gospels, turned *gafol*. In the 25 chapter of the same Gospel, at the 27 verse, it serveth to expresse what there in our modern English Translation is called, in some books, *advantage*, in other, *usury*, agreeable to that in the Saxon Psalter, Psal. 54. vers. 11. where *usura* in the Latine, in the marginal version or reading of the word, is rendred *gauel*. *Gafola* occurring in the first of King *Withreds* Laws of Sir *Henry Spelman*s Edition, in the first Volume of the Councils, pag. 194, is of that learned

Learned Knight expounded to us by *Redditus vel Pensioner*, as it is again in his Latine Version of Pope Agapit's decretal Epistle, pag. 164. of the same Councils, by *Redditus*. In an old Sanction of King Edgars, recited by Mr. Selden in his Notes upon *Edmerus*, pag. 153. what is there in the Latine read *solitus census*, in the Interlineary Saxon Version we find rendered there *gepublic gapul*. Hereunto I might adde heaps of instances taken from the Saxon Laws, the *Mare clausum*, and elsewhere, but I forbear to exspatiate: and to be short, *Gafol* is a word, which, as *Gabulum* in Doom-day-book, the skilful in the Saxon tongue, with Sir Hen. Spelman elsewhere, turn by what *Gabella* is expounded abroad, viz. *Vestigal*, *Portorium*, *Tributum*, *Gabella*.
Exactio, *Census*, in Latine, but in English, with *Verstegan*, *Tribute*, *Tax*, or *Custome*, to which with (f) Mr. (f) Peramb.
Lambard, and (s) St. Edw. Coke, let me adde, *Rens*: p. 529. witnesse, besides the former quotations, what occurs (t) Instit. p. 1. in an ancient will or deed (u) of one *Atbelwird*, the fol. 142.2. (u) In Archiv. Donor of certain land at *Ickham* in Kent to the Cathe- Eccles. Cant. dral at Canterbury, in the year of mans redemption 958. where you may read: *Neftes hiȝ his dage Eadrið* (f) fortē he ne...
gaf he libbe iȝ bpace yrð hōne gauele þe hit iȝ gecyðen (s) fortē he ne...
15, þet rynd v. pund, Jeache geƿe enne dag ƿepm into
þan hīpen, ðis þanne xl. ƿestenþ clēb, &c. And anon after again: *Við þane geleke gauel þe hīen binnan gecyðen* 15, &c. The former of which passages, under favour of the skilful in that language, I shall render thus in our modern English: *After his dayes, (or death)* *Eadrið; if he live, shall enjoy (or use) it, yeilding that* *rent which is imposed on it, that is, v. pounds, and every* *year (or yearly) one dayes farm (or virtual) unto the*

Conteining
four gallons,
so Fleta lib. 2.
cap. 12.

Couenant, that is, xl (measures called) Sextaries of ale,
&c. And the latter thus: With the same (or like) Rents
that herein is appointed. Let me adde what in another
like Record, both for time and place, occurs thus.
And after hys tƿegne dage wōrē aƿeebiscop Eadƿiþe
þessa, gis he lang libbe hanne hi, oðer hƿo hiȝ æfter gen-
gle hanne bȳ, bude sume of hys friend het lond sunþop
on hys aƿeebiscopers gemæde of gon mage toƿigten gaue-
le, oðer to oðer fōre ƿende, ƿo hit man hanne wünsen
mage wiþ hane aƿeebiscop het hanne libbe. That is, And
after both their dayes (or deaths), let Eadƿith the Arch-
Bishop, if he survive them, have (or take) these lands, or
else his Successour for the time being, unlesse some friend
of theirs, by (or with) the Arch-Bishops favour, may con-
tinue to hold that land at (or upon) the accustomed rent,
or upon what other contract (or condition) may be had (or
made) with the Arch-Bishop then living, (or, for the
time being.) I shall adde but one instance more from
the grant of Bocking (a known place in Essex) to the
same Cathedral, by one Ethelrich, in the year of
Christ 997. And ic gan hento tƿey se hide het Eadƿiþ
Gauelat eche ȝene mid hialue punde. That is: And I al-
so give those two hides (of land) that Eadƿith renteth
(or hireth) yearly for half a pound. So that to me it
seems clear, that ponere terram ad gablum, is as much
as to hire, or let out land by or for rent or farm, and by
consequence, terra ad gablum posita, taken in its proper
and genuine acceptation, is land hired, or letten out to
farm, or for rent. In the latitude of the word it com-
prehends besides, all censual, or tributary land, as also
what we call customary land, (in that sense wherein

Confuc-

Consuetudines, Customes, denote (x) Services) and so (x) Coke, In-
takes in all Rent-service land, which with our Saxon fit. p. 2. p. 58.
Ancestours, who called the rent or service paid or done
*for such land, (y) lan^g-gabel, and lan^g-gafol, was, by a (y) Spelm.
 transposition of the syllables, called and known by the* Gloss. in voce.
name of gafollans, or the like : (z) butan ^ðam people (z) Lamb.
he on gafollande sit. i. e. Except the Churle (or Coun-
try-man) that occupieth censual land, as one would say
now, Except the Country Fermor, or the like. He
seems by this to be properly un lan^g-gemb, i. e. one that
had no land of his own, such a one as had, being cal-
led lan^g-agents-man, i. e. terra proprietarius, a landed
man, as the word is (I take it) to be rendred, not Via-
tor, a way-faring man, or the like, as some (a) have (a) Spelm.
 Goff. in voce.
guessed. But to keep us to our Gafol, within and un-
der which term and notion, notonely the generality
of rent and customary, whether payments or services,
was comprehended and comprised, simply ; but what
we at this day call Rent-corn, Rent-honey, Rent-bar-
ley, and the like, the special and particular rents and
services, I mean, by the custome of some manors yeil-
ded by the Tenants to the Lords thereof, though now
for the most part turned into moneys, were in elder
times, in composition, called Corn-gavel, Husig-ga-
vel, Bere-gafol, &c. Without impertinencie I hope, I
shall here present the Reader with a list of as many of
them, as with much content to my self, I have ran-
sacked old Records to find out for this purpose, with
an assay of mine own at their several expositions, and
they are divisible into two sorts, the one beginning,
the other ending with Gavel. Both of them follow.

Gavel.

corne.	
erth.	
rip.	Wood-
med.	Work-
ote.	Swine-
dung.	Corne-
sod.	Peny-
tymber.	Malt-
Gavel-	Lel-
refter.	Leaf-
bord.	Hunig-
swine.	Were-
wood.	Twy-
lesster.	Bere-
werk.	For-
noht.	
fother.	
bred.	

Gavel-corn.

Corn-gavel.

In the list of the Rents and Services reckoned up in a Lieger-book of the Church of Canterbury, as charged upon that Churches manour of Adesham in Kent, this in particular thus occurs: *Item de Gavel-corn 66. s.m.* Doubtless it is the same with that in a composition made between the Abbot and Covent of St. Augustines at Canterbury, and their Tenants of Minister and Hengrove in Thanet, anno 19. Hen. 6. called *Corn-gavel*, and there thus described: *Et quod quartus Swillinga & dimidia, & quarta pars unius Swillinga residua tenebantur & tenentur de predictis Abbatie & Conventu per fidelitatem & relevium, & per redditum & servitium vocatum Corn-gavel, vix reddendo eisdem Abbasi & Conventui, & successoribus suis annuatim, in festo*

festo S. Michaelis Archangeli, de qualibet Swillinga-
rundem 4. Swillingar. Quindecim quarteria & quinque
buschellos ordei palmatis, & 15 quarteria & 5 buschellos
avenarum, & de predicta medietate & quarta parte unius
swillinga secundum ratam portionis ordei & avenarum
illas medietatem & quartam partem contingentis, defer-
rend. & cariand. ad costas & expensas predicatorum te-
nentium usque ad granarium dictorum Abbatis & con-
ventus infra monasterium S. Augustini predicitum, vel
per servitium reddendi pro qualibet acra dictarum qua-
tuor swillingarum in eod. festo S. Michaelis octo denarios,
& pro dictis medietate & quarta parte unius swillinga
secundum ratam portionis illas medietatem & quartam
partem unius swillinga de predictis ordeo & avena con-
tingentis, in casu quo predicti tenentes predictum ordeum
& avenam in eodem festo in formâ predictâ non solve-
rint. Thus the composition, whereby it is apparent
what Gavel-corn signifies, namely (as before was inti-
mated) Rent-corn.

In an Accompt-roll of the Arch-Bishop of Canterbury's manour of Reculver in Kent, anno 29. Edw. I. this service, under the title of *Arura*, occurs thus: *Item respondet de xxxv. acris de consuetudine arandi Gavelberthe.* In an old Customal * of Gillingham manour in Kent, of about that age, I read thus: *Item sunt ibi quinque juga, quodlibet arabit unam dimidiem acram ad semen frumenti, & seminabit, & herciabit, & dimidiem acram ad semen ordei, & herciabit, & unam virgatam ad avenam & herciabit & warebit, dimidiem acram ad ordeum, & nihil recipient, & vocatur istud opus Gavetersh.* This then (it seems) is a certain Tillage-service, like the *arura* in Bracton, fol. 35.b.due:

D.

by

Gavelberthe.

** In Archiv.
Archicp.
Cant.*

by the Tenant holding his land upon terms of plowing, &c. a certain quantity (more or lesse) of his Lord's Demesnes, not always performed in kind, but bought out and redeemed sometimes with money. *Et de 10. sol. de 10. acris de Gavelerth relaxato hoc anno,* quoth an old Rental sans date of the Arch-Bishops foresaid manour of Reculver. It was of some affinity, as with the French Poictovines *Biaus*, so also with that which Mr. *Lambard* calling *Benerth*, expoundeth by service which the Tenant doth with his cart and plough. With his plough indeed, and also with his harrow, but not (that I find) with his cart, it being a mere tillage-service, as *Gavelerth* is, & always performed *precario*, as the Frenchman saith, *precairement*, upon request and summons, (in aid, and for the help and ease, when need was, of other Tenants bound to do the like *de gable*, i. e. as I conceive, *ex debito*, and without summons:) and with allowance of (more than regularly was afforded in the other (a) service) a coredy, i. e. diet, or victual, (fometime called *Benebred*) during the employment. *Glanvils precarias carucarum forinsecarum*, lib. 8. cap. 3. may hence be understood.

Matthew Paris in his History of England, pag. 895. of the last Edition, making mention of a *Breve inauditum*, (as he there calls it) i. e. an unheard of Writ, issued by *Hen. 3.* recites this as a part of it: *Similiter inquiratur de carucis precariis*, which by the learned Author of the Glossary, at the end of the work, is thus illustrated: *Eranū & precariae* (saith he, speaking of several sorts of Ploughs) *quas scilicet in necessitate aliqua eminentiori, colonus unus à proximo (b) precario mutuabatur.* Hence the phrase in many old Custumals and Rentals of

Biaus.
Benerth.

(a) *Et omnes tenentes de isto iungo debent avarare, herciare, seminare, de semine Ar-chep. unam acram fine ci-ho, quia Ga-velerth, Cu-stumal of Tenham ma-nour.*
(b) Should he not rather be said, *nam ab hominibus* *mutuatur?*

of plowing this or that quantity of the Lords land by his Tenant, *de prece, de precaria, ad precariam*, and the like. *In precariis carucacum & in auxilio herciandi vj. sol. viij. den.* saith an old Accompt-roll (c) of Salt-

wood manour. The meaning of such passages in records of that kind as this: *want preses semel ad conre-dium* (d) *Curia, &c.* and the like may hence be pick'd out. It took name (this of *Benerth*) I conceive, of the Saxon *bene, postulatio*, as Mr. *Lambard*, and before him *Fornadensis*, translating the Saxon Laws, turn the word occurring in the title of the eighth of King *Ina's* Laws, as Sir *Hen. Spelman* doth by *Rogatis*, Concil. tom. i. pag. 583. Whence (probably) *Fleta*, lib. 2. cap. 84. speaking of those Ploughs, calls them *Carucas rogalas*.

A certain Service (the same, I take it, with *Brattons* Gavel-rip. *messura*, fol. 35.b.) undergone by the Tenants of some manours tied to reap their Lords corn for him, which if redeemed, or taken in money, was usually termed *Rip-silver*. Of the former, in the Custumal (e) of Westwell manour in Kent, I read: *De consuetudine metendi xl. aeras & dimid. de Gavel-rip in autumpno xl. s. vj. d.* And in another like record, I meet with the latter thus explained to our hand: *De sulinga de Witstable xvij. de Ripsilver, quia homines de Witstable solebant antiquitus metere apud Berthonam.* And as in Tillage-service, certain Tenants were bound to it *de gablo*, others *de prece*; and thence the one service called *Gavelsh*, the other *Benerth*; so for reaping also, there were some that held by *Gavelrip-service*, other by *Bedrip-service*, (the old Glossary at the end of *Bedrip-Hen. I.* Laws hath it *Benripe*:) that done *de gablo*,

without

without any bidding or summons, and for the most part without coredy; this *de prece*, upon bidding or summons, and regularly with coredy: *In villa de Ickham* (saith the old Custumal of that manour of Christ-Church) *sunt xvij. Corarii, quorum quilibet habet v. acras, & ha sunt earum consuetudines: Ducunt brasium, &c. & quilibet tres preces, i.e.* (saith the old marginal Glosse there) *quando rogantur per servientem Curiae, debent metere, sive aliud facere quod expedit Domino per tres dies, & si noluerint facere, possint artari, &c.* As I gave you some instances before of *Gavelrip*, so I might also of *Bedrip*; but, for brevity sake, I will onely refer you to that in Sir Hen. Spelmans Glossary, verbo *Bidripa*, which being barely mentioned there without exposition, may hence be understood. And as *Bene* in *Benerth* is of a Saxon original, so likewise *Bede* here in *Bedrip*; and indeed they are univocal, drawn (this) from the Saxon *biddan, petere, rogare*, and applied to this service upon the same ground that *býdel*, to a Crier, Beadle, Summoner, Bailiffe, so called from his office, which is to warn, summon, give notice, &c. as these Tenants were to be warned, summoned, in a word, bidden, to come and perform this service: *Et de Cxcix. operibus magne precarie provenient. de omnib. tenantibus Domini, tam liberis, quam nativis, infra dominium Domini, quorum quilibet domum habens de quo sumus exist, inveniet unum hominem ad magnam precariam, si ad hoc summonitus fuerit, &c.* as it is in Accompt (f) of the manour of Harwe, now called Harrow in Middlesex, anno 21. Rich 2.

A service of much affinity with the former. In an Accompt-roll * of Terring manour in Sussex, anno 11.

Edw.

Bidrip.

See Spelm.

Glossia. in Eccl. dillm.

(f) In Archiv.
Archiep.

Cant.

Gavel-med.

* In Archiv.
memorat.

Edw. I. it occurs thus: *Consuetudo metendi quæ vocatur Gavelrip*, follows *Consuetudo falcandi quæ vocatur Gavumed*. And anon after: *Et pro una septimana dum falcatur stipula quæ vocatur Gavelmed*. It needs no further opening.

A certain proportion of Rent-oats served in some-
time in kind, other while by composition redeemed
with money. As to the former, (its payment in kind)
I read thus in an (g) old Custumal, (sans dat.) of (g) In Archiv.
Southmalling manour in Sussex: *Borga de Wellingham*.
memorat.
Operarii. Omnes isti operarii de W. debent reddere annu-
atim de qualibet virgata unum quartarium avenæ, quod
dicitur Gavelote in xlms. In an Accompt-roll of the
same manour, I find a charge suitable: *Idem responderet*
de octo quarteriis, quatuor bush. avena recipiis de gabulo
Custumariorum de Wellingham. And for the redeeming
it with money, an old (b) Accompt, (sans dat.) of the (b) ubi sup.
Abbey of St. Augustines manours of Swane and Bore-
waremersh in Rumney mersh, furnish us with an in-
stance of it thus: *Et de avena de gablo vendita iiij. s.*
Like to that in old (i) Accompt-roll of Gillingham (i), ubi sup.
manour by Rochester: *Et de x. s. viij. d. de quinque*
quarteriis, duob. bush. de Gavelote de redditu venditis.

A service (like to that spoken of by Littledon, under Gavel-dung,
the title of Villenage) to carry the Lords dung out of
the site of the manour, unto the land of his Lord, &c.
whereof in an (k) Accompt-roll of Storham manour (k) ubi sup.,
in Sussex, of about Edw. i. time, under the title of
Consuetudines & servitia de omnibus Borgis extra bo-
scum præter Sustram, I read in the Accomptants charge
as followeth: *Idem responderet de consuetudine extrabendi*
fimum debita per Custumariorum tenentes xxvij. virgas,
dimid.

dimid. & j. ferling. in Borgh de Gote, Middelham, A-
stone, Northlington, & Wellingham in una septimana
post festum S. Michaelis cum auxilio Molmannorum,
quod servitium vocatur Gaveldung. See the Grand Cu-
stumier of Normandy, cap. 53. in fine.

Gavel-rod.

What service this was, the place it self where it occurs sufficiently explaines unto us, and that is an old

(1) ubi supra.

(1) Extent of the manour of Terring in Sussex, anno 3.
Edw. I. where under the title of Virgatarii operarii de Wadeberit, we have it thus : In borga de Wadeberit sunt xv. virgate, dimid. & j. ferling terra nativa, quarum qualibet debet claudere unam perticatam sepius circa curiam de Malling, & debet pro pollis & clausura quam facere solebat ad Natalem beati Johannis Baptista annuatim redderej. d. ob. quod dicitur Gavelrod & Burghard, &c.

Burgh-yard.

Gavel-timber. Certain Rent-timber to be used in repairing the Lords mansion-house, or some apperteining Edifice, and as some Records do specifie it, Rafters. Whence in an (m) Accompt-roll of Norbourae manour in East Kent, anno 31. Edw. 3. as a part of the Accomptants charge there, I read thus : *Et de C.C. resters de Gavel-tymber, de redditu, quilibet de longitudine xiij. ped. de quibus proveniunt de tenementio de Borewareyfle C. & de tenementio de Monynden C.* Another like Roll of the same manour calls it Gavel refier.

Gavel-refier.

Gavel-bord.

And much of the same nature was the next called Gavel-bord, whereof in the last cited roll mention is thus made. *Et de CCC. Gavelbordis de redditu, quilibet de longitudine iij. ped. dimid. unde, &c.* These rents and services were wont to be charged upon their Wealdish Tenants, such as occupied their Wood-lands. And so was the next.

And

And by an inversion of the syllables, *Swine-gavel*-*Gavel-swine*, A wealdish service (I say) signifying Rent-hogs, or Rent-swine, so called when paid in kind, (*Et de usij. s. x. d. de iij. porcius de gablo venditis ad parocum de Maghefeld, &c.*) As it is in a roll (n) of accompts of Mayfield (n) ubi sup. manour in Sussex, anno 11. Edw. 3.) otherwise *Swine-panege*, and *Swine-money*, and the like, when namely ges. they were redeemed with the peny, or with money, Swine-money which was usually paid at *Paroc-time*, that is, when the Lord, or his Bailiffe and Tenants met upon the place in the Weald, to hold a *Paroc*, a Court-like kind Paroc. of meeting, (wherof I have by me a record of some kept about Edw. 1. time) not much unlike the Forest *Swaine-mose*, where (*inter alia*) an accompt was taken of this service in particular, and generally of what hogs or swine had been taken in to feed and fatten the year past, or the last Pawnage or masting-time, and rent accordingly paid and received for the same. Hence I take it (from *Paroc*, I mean,) the name of that place by Bleane-wood near Canterbury, which we at this day call the *Paddock*, for the *Paroc*.

Sometimes written and called *Wood-lode*, *Wald-lode*, *Gavel-wood*. and otherwhile, by an inversion of the syllables, *Wood-gavel*: a custome or service incident to some Tenants, to carry home their Lords wood for him. An old (o) Accompt-roll (*sans date*) of the Arch-Bishop of Canterbury's manours, in South-malling, hath this mention of it in the Accomptants charge: *Et de xxvij.s. iij. d. ob. de fine cariandi Gavelwood de consuetudine.* It often occurs in like records of divers other manours, under that diversity of names.

A certain measure of Rent-ale. Among the articles Gavel-setters;

Tol-fester.

to be charged upon the Stewards and Bailives of the Church of Canterburies manours *infra Cantiam*, according to which they were to be accomptable, this was wont to be one : *De Gavelsester cujuslibet bracini braciatis infra libertatem maneriorum, viz. unam lagenam & dimidium cervisia.* Another old Record calls it *Tolsester* in these words : *De Tolsester cervis. hoc est de quolibet bracino per annum unam lagenam de cervis.* as it is in an old book of the same Cathedral, amongst the rents of Aſſeſe of Halton manour in being undoubtedly the same, in lieu whereof the Abbot of Abbington was wont of custome to receive that peny mentioned by Mr. Selden, in his learned Dissertation annexed unto *Fleta*, newly published, cap.8. num. 3. and there (by ſome mistake, haply of the Printer) termed *Colceſter peny*, for *Tolſeſter peny*. Nor differs it (I take it) from what in the Glossary at the end of *Hen. I.* Laws is called *Oate-gavel.*

Oate-gavel.

Gavel-werk.

(q) ubi sup.

(q) ubi sup..

Manuopera.

Carroptera.

A service charged upon Tenants, for example ; In Charing manour in Kent, an old (p) Rental whereof of *Edw. I.* time hath it thus : *Grenebelle Eadmundus filius Thomae de Grenebelle de uno jugo debet, &c. --- arabit unam acram 6. pedes, & arabit unam acram, dimid. & 9. pedes, de Gavelwerk.* This admitting also of a transposition of the syllables, is ſomtimes found written *Werk-gavel*, in barbarous Latine, *Werkgabulum*, as in an (q) Accompt-roll of the Arch-Bishops manour of Tunbridge (now called Tunbridge) of *Hen. 3.* time, and ſignified Rent-work, which was of two ſorts, the one personal, by the Tenants person, which they called *Manuopera*; the other by his carriages, thence termed *Carroptera*; and they both met (I take it) in Villeins called *Gaigneurs.*

I.

In an old Custumal of our Cathedral at Canterbury's manour of Clyne in Kent, I find them thus coupled: *De Gavelnoht vel Gavelfother de Ostreland.* The latter seemeth to expound the former, shewing them both to import what at this day we call Rent-fodder: the latter word in which composition cometh (as I suppose) of the Teutonick *Voeder*, or the German *Fuder*, which we at this day pronounce *Fodder*. Of the *Fodrum*. Feudists it is called *Fodrum*, to whom I refer such as desire a further explanation of the term, wherein the learned *Hofoman* (I take it) is more copious than the rest, in his Commentary *De verbis feudalibus*, in voce. Let them also have recourse to our learned Glossarist, in verbo *Fodrum*.

In the Custumal of the same Churches manour of Gavel-bred. Chatham in Kent, it occurs thus: *Allocantur per annum pro Gavelbred ad herdemet. iiij. sum. dimid.* It is the same (I take it) which I find elsewhere thus expressed: *In pane ad Gavelbred, de consuetudine arantium & mesentium, iiij. sum.* So an Accompt-roll (*r*) of Charing (*r*) ubi sup. manour in Edw. r. time. Nor is it probably any other than what in the Custumal (*f*) of West-Farlegh manour in Kent is termed *Averbred*. *Allocantur per annum pro averbred, iij. s. iiij. d.* It seems to be a proportion of food or victual allowed to the baser sort of Tenants, such as the *Custumariis*, *Cotariis*, *Villani*, and the like (the *Gaigneurs*) towards their coredy, or sustentation, during their employments in the Villein-services of their Lords, such as those reckoned up by the Author of the Mirroir, chap. 2. sect. 28. where he saith: *Et ascuns per villeins customes d' arrer, ower, charrier, farclir, fauchir, scier, tasser, batre, ou tielx autres man-*

(*f*) In Archiv.
Eccles. Cantz.
Averbred.

ners d' services, which were not alwayes attended with such allowance; whence my Authour goes on, adding, & *ascun foiss sans reprise d' manger.* And thus far of the particular rents and services, whose names begin with *Gavel*, to which I might adde that of *gapol hptel*, occurring in the Laws of King *Ina*, cap. 44. Now to proceed to those ending with it.

Wood-gavel.
Werk gavel.
Swine-gavel.
Corn-gavel.

Of which the first four, (*Wood-gavel*, *Werk-gavel*, *Swine-gavel*, *Corn-gavel*) having their several expositions in their proper places, viz. in the former list of services, whose names begin with *Gavel*, I passe from them to the rest of like termination.

Peny-gavel.

In the Conquerours, and some succeeding Kings Charters, made to St. *Augustines* Abbey at Canterbury, the present service occurs by the name of *Gabulum denariorum*, the tithe whereof here excepted from these, was elsewhere granted unto other Monks, whereof see Mr. *Seldens* History of Tithes, pag. 321, 330, 331. It was a rent usually reserved and paid in money, witness the mention and description of it without composition, between the Abbat and Covent of St. *Augustines* and the men of Thanet, whereof before in *Gavel-corn*, and speaketh thus: --- *Tenentur de prædictis Abbate & Coventu & Predecessoribus suis per fidelitatem & relevium, & per redditum & servitium vacatum Peny gavel, viz. reddendo annuatim eisdem Abbatu & Coventui & eorum Successoribus de qualibet swillinga dictarum xlij. swillingarum in festo S. Martini in hyeme decem & novem solidos & octo denarios, & de prædicta quarta parte unius Swillinga in eodem festo annuatim quatuor solidos & undecim denarios, & pro qualibet acra dictarum xxxvij. agrarum terra de Swillingland.*

*land in eodem festo secundum ratam portionis redditus
easdem xxxvij. acras terrae contingentes, &c.*

In the Custumal of the Church of Canterbury's Malt-gavel,
manour of Mepham in Kent, amongst the rest of the rents services there, this occurs for one : *De xxij sum.
iiij. bush. de Maligavel, &c.* It signifies Rent-malt,
and is the same (I take it) that in another like Record (an old Rental of Eastry manour in Kent) is called *Malt-shot*, and thus expressed there. *De Malt-shot ser-* Malt shot.
mino circumcisionis Domini xx. d. But so called, I trow, when compounded for in money ; otherwise, upon the same ground, *Malt-peny*, as the old Customal of the Malt-peny,
same manour frequently nameth it.

So called, peradventure, in relation to some greater rent or service arising and paid out of the same land, Lef-gavel.
that this, at some other part or season of the year (I guesse hereat by an old (⁽¹⁾) Customal of Charing manour, where indeed I found it so :) and so *Lef-gavel*, (⁽¹⁾ In Archiv. Archiep.
Cant.
quasi *Lesse-rent*, or *Lesse-service*. I take it to be the same that in the Customals and Rentals of some other manours, I find written *Lesgeld*, and *Lesgeld* ; unless it be mistaken for the next, *Leaf-gavel*, thus occurring Leaf-gavel.
in an old Accompt-roll of the Church of Canterbury : *Et de xii. l. iiij. d. ob. de annuo redditu assisi. cum Leaf-*
gabulo ad terminum S. Martini ; which I conceive to be the same with what in a like Record of Hathewolden (now Halden) manour in Kent, is called *Lef-silver* : *Et de xvij. d. de Lef-silver in Hathewoldum.* The old Custumal of Tenham manour in Kent, calling it *Lyef-yield*, thus explains it : *Tenentes de Waldis non possunt arare terras suas ab equinoctio autumpnali usque festum beati Martini sine licentia.* Et ideo, reddunt annuatim di- Lef-silver.
midiam

*midlam marcam ad festum S. Martini, five fuerit Pesso-
na, five non.* Et vocatur *Lyef-yeld*. Whereby it seems
to be a tribute paid by certain Wealdish Tenants, for
liberty to plow their grounds during a certain season
of the year, viz. *tempore Pessone*, which, because of
some prejudice that might thereby redound to the
Lord in his Pawnage, was not permitted without his
leave.

Hunig-gavel. *Gabulum mellis*, as the old (u) Rentals of Chiflet
(u) tibi sup.
(x) ubi sup. manour in Kent seem to term what some ancient Ac-
compt-rolls (x) of Otteford and other manours call
Hunigaved, both one and t'other signifying Rent-
honey.

Were-gavel. *Item de Weregavel vj. d. aliquando tamen plus, ali-
(y) In Archiv. quando minus.* Thus in the (y) Custumal of the Can-
Eccles. Cant. terbury Cathedrals manour of Leisdowne in the Isle
of Shepey. It seems to be a rent paid in respect of
Wears or Kiddels, to catch fish withall, pitch'd and
plac'd by the Sea-coasts, and, until *Magna Charta* for-
bade it, in some rivers too, whereof see further in Sir
Hen. Spelmans Glossary, veibo *Kidellus*; and in Sir
Edw. Cokes Institutes, part 2. pag. 38. and elsewhere.

Twy-gavel. In an (z) Accompt-roll of the manour of Reculver
(z) In Archiv. in Kent, anno 16. Edw. 3. this service, in the charge
Archiep. there, thus occurs: *Item respondet de 814 & dimid.
Cant. ped. clausur. bayag. fac. circa manerium, ex consuetudi-
ne, unde de Twygavel 200.* I meet with it elsewhere also,
but with explanation no where. Taking liberty of
conjecture, I conceive it to be some double kinde of
service by the *Twy* prepoled, as elsewhere *Twysket* (an
imposition upon the Tenants of Aldington manour by
Romney marsh, for maintaining the Sea-coasts there,
and

Twy sket.

and other like defences against inundations:) is termed *Duplum*, as thus: *Compensus de duplo Walka, quod vocatur Twyskes.* So the Accompt-roll of that manour in the sixth year of St. Edmunds Archbishoprick.

Is termed of our learned Glossarist, verb. *Berewica*, *Bere-gafol*, by *Tributum hordeaceum*: elsewhere, viz. verb. *Gabella*, by *Redditus hordeaceus*. You shall finde in the 60th. of King *Ina's* Laws, in Mr. *Lambards* Archaion. If it were not Rent-barley, I should take it for the *Drinclean*, occurring, as in the last chapter of the *Leges Praebyterorum Northumbrenium*, in Sir *Hen. Spelman's* Councils, pag. 502. So also in the 87th of King *Cnutes* Laws in the Archaion, and in this latter place rendred in the old Version in *Brampton*, (just as *Oryncelan*, mistaken for *Drincelan*, in the old Glossary at the end of *Hen. I.* Laws) by *Retributio potus*. If so, it seems to be the same with what was afterwards called *Scot-ale*, where-
of you may read in *Matth. Paris*, the Charter of the Forest, *Bracton*, the *Mitroir*, and elsewhere. King *Hen. 2.* in his charter to the citizens of Canterbury, ac-
quits them of it: *Ita quod (faith he) Vicecomes meus Cantuar. vel aliquis alius Bellivus Scotalam non faciet.* It's sometimes called *Potura*, and was a contribution *Potura.*
by the men and Tenants towards a Potation, i. e. a Drinking, or (as some yet speak) an Ale, provided to entertain the Lord or his Bailiffe withall, coming to keep Court, or the like, raised by a proportion or rate (more or lesse) according to the better or meaner condition. In an old (a) Custumal of Southmalling manour in Sussex, in that part of it intituled, *Bortha de feld*, I read as followeth: *Item si Dominus Archiepiscopus feceris Scotall. infra boscum, quilibet terram tenens dabit*

(b) Ubi sup.

dabit ibi pro se & uxore sua iij. ob. & vidua vel Rosa-
rius j. d. In the (b) Extent of the manour of Terring
(to give you another instance) anno 5. Edw. 1. this Scos-
ale-service is thus remembred; Lewes. Memorandum
quod predicti tenentes debent de consuetudine inter eas
facere Scotalium de xxvj. d. & ob. ita quod de singulis sex
denar. detur j. d. ob. ad potandum Bedello Domini Archi-
episcopi super predictum feodium. Bracton faith, It is
sometimes called Fildale (tol. 117.b.) which our learn-
ed Glossatist, in voce, correcting, reads Fildale, and is
in some sort followed by Sir Edw. Coke, Institut. part 4.
pag. 307. With the *Varia lectio* before Bracton, I
should rather read it Gildale, and then indeed, as it
comes nearer the other Scot-ale, so with that better an-
swers to our present Bere-gafol, Gild, Gafol and Scos,
being as it were *Synonyma*, and univocal.

For-gavel.

Observed to be alwayes paid by the Tenant per
avall to the mesne Lord, not to the chief, and thence
called in some old records and deeds, *Foris-gabulum*,
quasi extra (vel prater) gabulum quod Domino capitali
debetur: just like the French mans *Surcens*. Will you
have an example? John then the son of Richard at

(c) In Archiv. Eccles. Cant.

Horsfeld, by his (c) deed, dated anno 1242. gives to
Warin of Stablegate, a parcel of land, to be holden to
him and his heirs, or to whomsoever he shall give, sell,
or assigne it, (a clause without which, by the account
of those elder times, land was not alienated from the
proper (d) heirs:) paying to the Prior and Covent of
Christ-church Canterbury (Lords, it seems, of the
Fee) certain annal rent and hens, and to the Feoffor
and his heirs j. d. yearly, *de forgabulo, &c.* Some other
instances of this kind might be added, but I must con-
tract,

(d) See the
Mirrour, p. 36.

tract, passing over Metegavel, whereof mention is made in the old Glossary, at the end of Hen. i. Laws, and there in Latine rendred *Cibi gablam*. Now a word or two of *Gavelet*.

This, I must tell you, was no Rent or Service, but betokeneth a rent or service with-held, denied or detained, causing the tenements forfeiture to the Lord; whence those words of *Fleta*, reciting the Statute *De Gavelleto*: *Et ex tunc vocentur tenementa illa* (not *For-schke*, as in Tottells Edition of the Statute, followed by Cowell in his Interpreter, but) *Forisfacta*. See *Fleta*, pag. 119. It is taken (I confess) of some for a Synonymy with *Gavelkynd*, and to import land letten for rent, or the like; and *per me licet*; the acception shall passe for me, as warrantable enough from the latitude of the term; but in the sence wherein the Statute (10. Edw. 2.) and other ancient records (all that I have ever view'd) do take it up, it seems to carry no other meaning than the detriment of rent or service, whence that of (e) Sir Edw. Coke: *Gavelatum* (saith he; I adventure to correct it so, as supposing it corruptly printed *Gavelletum*) ^{(e) Inst. par. 2. pag. 204.} is as much to say, as to cease, or let to pay the rent. *Breve de Gavelleto in London est breve de Cessavit in biennium, &c. pro redditu ibidem, quia tenementa fuerunt indistringibilia.* Thus he. In the Kentish Eye of *Hervieres de Stanton*, recorded in a Manuscript of St. Austin's at Canterbury, among the Pleas there concerning the Abbat and Covent, pag. 106. it occurs thus: *Et postea per quandam consuetudinem qua vocatur Gavelate usitata in comitatu isto de terris & tenementis de Gavelkinde, pro redditibus & servitiis qua à retro fuerint de eisdem per plures annos devenerint eadam terra in manus eiusdam*

cujusdam Abbatis, &c. I have often met with the word in old Accompts of the Arch-bishops manours, from which I could present you with a cloud of instances, but for brevity sake, I shall trouble you but with one,

(f) In Archiv. Archiep. Cant. and that taken from a Roll of Ringemere in Sussex, in Edw. 3rd time. *Item* (saith the Roll) *de defectu redditus enjusdam curtilagii jacentis Gavellate quod fuit Ali-*

ciae Hammerii, per annum in manu Domini iiiij. d. The fence, I trow, which I gave you of *Gavel*, is by this time sufficiently asserted, which, if compared with the term it self, will appear very natural, being derived and compounded of *Gavel* and *let*, or *late*; a word (this latter) fetch'd at first (if I mistake not) from the Teutonick *Laeten*, signifying, as we are taught by *Kilianus* in his Etymologick Dictionary, *linquere, relinquerre, omittere, dimittere*, just (I take it) as our old Saxon *laean* seems to do. The Germans have it *Lassen*, the French *Laiffer*, we at this day *Let*. The termination is found in some other words now antiquated and obsolete as well as this: for example, in *Hereslit*, which by the common opinion of Expositours, sounds as much as *armorum depositio*, or *exercitus desertio*, coming from *Her*, (saith *Lindenbrog* in his Glossary) *exercitus*, and *lassen*, *deserere*. Sir *Hen. Spelman* (I confess) as to this latter syllable, is of another mind, writing it *slit*, and *sle*, and construing it by *fissura, disruptio, separatio*, and so will have *Hereslit* to significare *disruptionem exercitus*: For my part, under favour, I conceive, that between the latter syllable in *Hereslit*, and the latter syllables in *Laghslite*, *Manslakte*, *Theofslite*, and the like, there is this difference to be observed, that namely in the former, *Hereslit*, the latter syllable is *lit*, (the

(the *s.* being here a note of the (*g.*) Genitive case, and (g) See But-
pertaining to the former syllable:) signifying deser-
tio, derelictio; in the other, *slichte*, *flyhte*, or *sliete*, be-
tokening, *ruptio*, *violatio*, &c.

See But-
ers English
Grammar,
pag. 19, 34, &
35.

As Rent and Service in general was understood by Gavel-man. *Gable, Gavel, &c.* simply, and particular rents and services denoted by an application of it to particulars, as in the former compounds, so the man, the Tenant that paid the one, and performed the other, was suitably called of old, as in the 6th. and 22th. of King *Ina's* Laws, *garolgylfa*, more of late, *Gavelman*: whence *Gafol-gylda*. (for example) that passage in an (*b.*) Accompt-roll of (*b.* In Archiv. Terring manour in Sussex, anno 11. *Edw. I.* Et a*e* iii*s.* *Achiep.* *Cant.*
vj. d. de incremento redditus de Simone Theodulfi, de una
virgata & dimid. cum uno messuagio in Salwenton -----
traditis eidem Simoni hoc anno in servitium de Gavel-
man, quantum Gavelman debet de tanto tenemento. He
was one of those (I conceive) that in a fore-cited Ex-
tent of the same manour, are thus differenced and di-
stinguished from other sorts of Villeins: *Villani de*
Terring qui vocantur Gavelmanni. By an endorsement
upon an old (*s.*) Custumal of Charing manour, I find (*i.* ub sup.
that Otterford manour had its *Gavelmanni*. And a-
mongst the then Tenants of Charing manour, and the
services charged upon them in that Custumal, I read of
some there termed in one place *Gavelkendeyes*, in ano- *Gaveliken-*
ther *Gavelmanni*. The term, I conceive, may properly *dys.*
be given and applied to our Kentish Tenants in *Gavel-*
kynd.

One thing more I have to note, before I leave *Ga-*
ble, Gavel, &c. viz. that where it comes into mention
(as it often doth, in the *Reddendum* of deeds, or teoff-
ments)

Mala.

ments) with *Mala*; it there properly signifies, and is strictly to be taken for Services or Customs; as on the other side, *Mala*, there as properly betokens Rent, or Ferm, which being chiefly two-fold, was distinguished into White-Rents (*Redditus albi*, *Blanc ferm*) and Black-Rents, (*Redditus nigri*, *Black maile*:) that, paid regularly *in pecunia*, in silver, and therefore called *White*; this, *Black*, because, for the most part paid

(k) See Spelm. Glossary, verb. *Ferma alba*. *Coke*, Instit. part 2.19. and 44.

in pecude, or the like, say (k) some: if I might add an expression, I should rather *in blado*, or, if that be not full enough, *in annona*, comprehending all sorts of provision, wherewith the Lords table was furnished, and himself and family fed. And consequently, where I meet with a Tenant holding *per gablum & malum*, as there were, many such of old, and I could instance in some, as in Charing, Monkton, Reculver Broke, and other manours in Kent, I should, if I were to play the Expositour, render it *per servitium & fermam, vel redditum*. The tenure continues to this day in Scotland, whence they (l) conserve *Firmarius* by a *Mail-payer*,

(l) *Skenaus de verbor. scilicet verbo Firmarius.*

a *Mailer*, or *Mailman*. The word (as I conceive) is originally British, coming of their *Mael*, which in the Welsh Vocab. is in Latine rendred *Lucrum, emolumen-tum, questus*, as *Maelio*, the verb, *Lucrari, questum fa-cere*. The Saxons used it in the same fence as with the Latines, *veftigal, stipendum*, whence this in the Chronicle of Abbingdon, anno M.L. *þær ylcian geaper he sette ealle þa litymen of male*. Which the Latine Chronicle of *Flor. of Worcester*, and others give thus: 1051. *Rex Eadwardus absolvit Anglos à gravi ve-stigati, &c.* Hence also thus in the same Chro. M.L.

I þe reighð geponse to Legeceastre I þær abisen heora

heora māles be ēlfgap heom behet. I. (according to the same Latine Histories) *Classis Algari Comitis Leogece-
ſram deuella, ſtipendium, quod eis promiferat, ibi ex-
pectavit.*

By this time, the Reader is satisfied(I hope) touching the true construction of *Gavel*, *Gafol*, *Gable*, or how-ever else he shall chance to find it written, both as the word is taken simply, and as it is used besides in composition, in each importing *Cens*, i. e. Rent, either in money, provision, or works. And being thus far ad-vanced in the dispatch of our positive Proposition (*what is the true ſence of Gavelkynd*) I must now defire the Reader, in the next place to obſerve and conſider Land Cen-with me, that, as there are divers ſorts of land to be ſual.
Land not found, both in this County and elſwhere, by the na-ture of their Tenure not *Cenſive*, or *Cenſual*, nor of the kind to pay or yeild *Gavel* (that is, ſuch Rent, or Rent-service, whether in money, provision, or works, as arileth from ignoble, base, and plebeian Tenures, in which onely *Gavel* is conuerfant) to thoſe of whom ſuch lands are holden, thoſe namely holden in *Aledio*, in Frankalmoigne, (or Mortmaine, as called (m) also (m) *Hotoman*: abroad, because yeilding the Lord no profit, as being de verb. Feu-in a dead hand) in Knights-service, in Frank fee, and dal. in verb. *Manu mor-* the like; so is there also, ſuch as that holden in So-tua.
cage, or Burgage Tenures, or the like, (thoſh free) which contrariwife is *Cenſual*, liable to Rent, in ſome oge or more of the kinds premised. To diſtinguiſh therefore, if not generally what land is, from what is (n) See Spelm. not, of *Gafol*-*gilaen* nature, or of the kind to yeild or verb. *Feudum* pay *Cens*, yet ſpecially to put a diſference between *feutiferum*, & (what alone is properly and anciellty called (n) *Fee*) *bile*. *Feudum igno-*

Knight-service land and it, under which double head is comprised the generality of our whole Countries lands, answering, as to that dichotomy of Chivalry and Socage Tenures, whereunto all the land in England in the hands of common persons is (o) reserved, so also to that known distinction of their lands in Normandy (from whence, as some (p) surmise, we received our Gavelkynd, whereof more hereafter) unto *Etef de Haubert*, and *Fief de Roturier* (that is the Noblemans Fee, and the Husbandman or Ploughmans Fee:) for distinction sake, I say, of Censal or rented land, or Rent-service land, from what, like Fee properly so called, being holden *per liberum servitium armorum*, yeilded no Cens, Rent, or Service, whether in money, provision, or works; the former of the twain was called *Gavelkynd*, that is, (as Mr. *Lambard* rightly in the second of his fore-mentioned conjectures) of the kind, or nature to pay or yeild rent, or land holden, not properly in Fee; but as the Feudists are wont in this case to distinguish *contractu censuali*, as being letten out with, or under condition, to pay Cens or Rent, or with a reservation of Cens or Rent, like unto those in the charters of the Conquerour, and (his son) *Hen. I.* the one to *Batell*, the other to *Reading Abbeys*, expressly called *Terre censuales*, and there opposed to Fee, witnesseth this provision occurring in each charter: *Terrae censuales nec ad feendum donec, nec milites, nisi in sacra veste Christi facias, nec de possessionibus Ecclesie quisquam teneat aliquid feudaliter absolutum, sed ad censum annum & servitium Abbati & monachis debitum.* See *Clement Reyners Apostolatus Benedictinor. in Anglia, tract. 2. pag. 137. &c. 154.*

(o) Cowels
Interpreter,
verb. *Chivalry*.
(p) *Lamb.*
P. amb. p.
345.

Ten^e censua-
les.

It is no simple word (*Gavelkynd*) but a compound kind (in *Gav-
elkynd*) what
of *Gavel* and *kynd*: the latter syllable whereto (to
proceed on to that) cometh and is contracted of the
Saxon *gecynbe*, a word frequently occurring in the
Saxon Sermon set forth and published by Mr. *Fox* in
his *Acts and Monuments*, and again of late by Mr.
Lisfr., as an Appendix to another Saxon piece, a Tre-
atise of the old and new Testament; in the version or
translation of the word they both concur, rendring it
in our modern English (q) *Nature*. To give an in- (q) As doth
stance or two: *æfter iohum gecynbe*, i. e. *after true* also Mr. whe-
nature. *Hit is on gecynbe*, i. e. *it is naturally*, and the loc in his Lat-
like. It will peradventure be objected, that Mr. *Lam-
bard*, in his *Perambulation*, pag. 495. meeting with the
word several times in the Saxon will of *Byrhtric of
Mepham*, in this often repeated passage there: *innon þ
gecynbe*, alwayes translates it, (after the old Latine
version in *Textus Roffensis*) *within that kinred*, and in a
marginal note againstt it, calleth it, *a kynd of gift in tayle*. *Gecynb mis-
tained* by
But, for reply, if I may have leave freely to deliver my constuted by
sentence, that version is not good: for, under favour, Mr. *Lambard*,
gecynbe there importeth not (as that Translation
would) *kinred*, but rather *kynd*, *nature*, *sort*, *quality* or
condition, and consequently *innon þ gecynbe* there, if
rightly, is thus (I take it) and not otherwise, to be
Englished, viz *in that kind*, or, after that *nature*, or,
upon the same terms, or, with the same *condition*, ha-
ving relation (if you mark it) to the tie upon the next
precedent legacies, gifts or devises of other land, char-
ged either with alms, or with rent, in way of alms,
payable thereout by the Legataires or Devisees, for
the Devisor or Testator his souls health. Had it been
otherwise,

otherwise, so namely that kinred had been intended in that place, I suppose the Donor or Testators expression would rather have been this: *innon þ cynpine, innon þ mægþe, innon þ cneopisse*, or the like, words more proper (I take it) for such an expression than that of *ȝecinbe*.

To proceed then, and having thus at length discovered from what roots the denomination of our *Gavelkynd* first sprang, namely, from *Gavel* and *Gecynde*, let us now put, or couple them together: for whose better conjunction, and smoother pronunciation, former times have filed and pared off the former syllable from the latter word *Ge*, (a preposition much used of our Ancestours, the English Saxons, but for the most part (r) superfluously:) and left it a bare monosyllable, *kind*, which in the termination of many Adjectives, they used to write and pronounce *cunbe*, as *ƿorucunbe, ȝorcunbe, eocunbe, ƿiȝcunbe*, &c. for secular, divine, &c. By means of which contraction (usual in words of this compound nature, as *Wapengemute, Burg-gemote, Halig-gemote, Scire-gerere, Port-gerete*, and such like, are at this day written and pronounced *Wapentake, Burgmote, Halimote, &c.*) the words being put together; are read *Gavelkynd*, and accordingly, or with very little variation, constantly written in records, deeds, and other monuments of times. Thus (for example) in a number of deeds and conveyances, which I have (f) seen recorded in the Lieger-books of the Cathedral at Canterbury, and St. Austin's late Abbey there, phrased all of them after this manner: *Tenendum ad (or in) Gavelkendam*.

Thus also in the inquisition cited and exhibited by Mr. Lambard,

(r) *Lambard*,
Glossary
before his Ar-
chaion, verb.
Praefatus. *

(f) Whereof
some copied
here, in the
Appendix,
Scriptu, 42,
62,72,82,92.

Lambard, in his discourse of the Kentish Customes, at the end of his Perambulation, where the phrase or expression of *tenuit in Gavelkind*, is sundry times obvious. Thus again in an ancient deed of feoffment belonging to Heibaldowne Hospital, whereby a parcel of land is given to the poor people there, *in perpetuam eleemosynam, and to Gavelkind*, as the deed is phrased. The gift (by the way) is somewhat more remarkable then ordinary in several respects; wherefore, and the rather because it is but short, I think it not amisse to give it a full recital.

Sciunt presentes & futuri nos filios Wilbaldi, Herbinum & Eilwardum, heredes suos Thomam & Paganum, concessisse infirmis de Verbaldune, unam acram & dimidiam terrae, scil. Langenekte, cum fratre suo Viberto infirmo in perpetuam eleemosynam, and to Gavelkynd: Reddendo sibi duos de-narios in die Sancti Nicolai. Hoc concedant filii sue Basilia & Hawis.

From the tenour of this deed or conveyance, I collect and conceive; first, that this land was of the nature of what by the Feudists is called *patrimonialis, gentilitia, profectitia, hereditaria*, and that the Donors or Feoffors held it by descent, because their heirs do here concur and consent with them in the act of alienation, according to the ancient common (⁽¹⁾) Law of England, whereby a man could not alienate such lands as he had by descent, without the consent of his heir, though it were otherwise in point of purchase, witness (⁽¹⁾ besides the authorities in the margin referring to prin-

(1) *Glanvil.*
lib. 7. cap. 1.
Cowel, Institut.
lib. 2. cap 20.
num. 7. Coke,
Instit. part 1.
fol. 94.b. See
Bracton, lib. 3.
fol. 407.b.
ted.

The Etymologie

ted books) the following passage in a Charter recorded in a Lieger of the often alleged Cathedral at Canterbury of certain land(all which the party had) in Southweik, given to that Church by *Norman le Wauter*, in the year of Christ 1204. which thus speaketh : *Et quia predicta terra de libero catallo, & proprio perquisito meo fuit, & non de aliqua hereditate parentum meorum, ideo Denim inde & S. Thomam Martyrem, & Sanctos Cantuariensis Ecclesie, & conveniunt monachorum ejusdem, heredem (u) mecum legitimum inscribo, & hac mea carta in perpetuum constituo.*

(u) This seems to thwart Glan-

vil, lib. 7. c. 1.

fol. 46. a.

Potes itaque

quilibet, &c.

and Bratton,

fol. 62. b.

(x) Cap. 66.

fol. 164. b.

might easily be added from the same *Promptuarium*. The Feudists in this case distinguish between *Feudum novum* & *antiquum*, as may be seen in *Vulteius, de Feudis*, lib. I. cap. 10. num. 72. In the next place, the Reader may please to observe with me, that as (x) Briston distinguisheth of a double tenure in Mortmaine, the one called *Almoigne*, or *Aumone*, simply, the other *Frank almoigne*, describing the former to be a gift in alms, but not free alms, because (saith he) a certain service is retained or reserved to the Feoffor, cap. 66. fol. 164. b. so this in hand is no alienation in Frankalmoigne : the Feoffers (it seems) not intending to give the land in that absolute manner, but, in token of Seigniory, to reserve something of service to themselves, phrase their gift, not in *puram eleemosynam*, or in *liberam eleemosynam*, (one of which words, viz. either *pura* or *libera*, is (some say, others say (y) both) essential to the making it a tenure in Frankalmoigne, and to the excusing it from service) with which the next following words (*andie Gavelkynd*) could not have consisted ; pure alms, or Frankalmoigne, excluding the

(y) Bratton,
12. c. 10. fol.
22. b. Coke,
Instit. part 1.
fol. 94. b.

return

return of all but divine services and burthens ; they phrase it not therefore, I say, *in param*, or *liberam elemosynam* but only *in perpetuam elemosynam*, and to *Gavelkynd*; by the former of these words, investing the Hospital with an estate in perpetuity; by the latter, and the *Reddendo* following, saving and reserving to themselves a quit-rent, as it were, *in signum dominis*; that is, they reserved to themselves the service, and granted to the Hospital the *usum fructuum*: or they granted the *usile dominium* to the Hospital, and reserved the *directum* to themselves. So that whereas *Bra-*
eton and (z) others make mention of a tenure *in feodo* (z) Lib. 7.
quoad servitio, & non in dominico, referring to the chief
 Lord; and of another *in feodo & dominico, & non in*
servitio, relating to the Free-holder, the former may
 here be referred to the Feoffors, the latter to the Feof-
 fees in this deed. But this *Paragon*. And now to wind
 up all (concerning this first Proposition) and not to en-
 large with any further instances (wherein I might be
 infinite) for asserting this truth of our *Gavelkynd*s deri-
 vation: *Gavelkynd*, we see, is the lands right name,
 whose Etymologie was never wrested to *Gife-eal-syn*,
 whose signification of Censual, Rented, land, or Rent-
 service land, was never questioned till that within our
 fathers memories, one and all, by a kind of error, *jure
 veluti successoris*, transmitted to them, run a head in a
 wrong and mistaken derivation.

G PROPO-

c. 19. fol. 45. b.
 Item 1. 4. fol.
 263. b. Coke.
 Instit. part. 1.
 fol. 1. b. verb.
 Fee simple.
 Elets, liby.
 c. 5. parag. 36.

PROPOSITION II.

The Nature of Gavelkynd-land in point of Partition.

Disallowing then *Gavelkynd* (as to the name of it) to be derivative from Partition, our next enquiry shall be, if (on the contrary) Partition owe itself to *Gavelkynd*, or to what other cause. Before I further enter into which research, or offer any resolution to the

Quare, give me leave to preface it with certain rules, grounds and principles, in this case fit to be premised. You are then desired to take notice, that here in England, we acknowledge no land (no inheritance) parti-

ble or divisible, but what is so either (first, by Law, as in the case of Females, succeeding for lack of Males, whether in Knight-service land or Socage, which in this point differ not, or what (secondly) is so by Custome, as in our present case of *Gavelkynd*, and such like & no parcellers of land (I say), in point of inheritance or succession, but either according to the course of the Common Law, or by Custome, as termed by *Lition*, and our more modern books, the same in effect with what of elder time, in *Bractons* (*a*) language, are called, 1 *Ratione personarum*, 2 *Ratione res vel serre*.

(a) Fol. 278,
373, 418.

In the next place, let me adjoyn what in this point of Partition is delivered by those two ancient and famous Sages of our Law, *Glanvill*, and *Bracton*, whereof the former (*b*) speaketh thus: *Cum quis ergo hereditatem habens moriarus, si unicum filium heredem habuerit,*

(b) Lib. 7.
cap. 3.

erit, indistincte verum est, quod filii ille patris suo succedit in toto. Si plures reliqueris filios, tunc distinguuntur internum ille fuerit miles, sive per feodum militare tenens, aut liber Sokemannus: quia si miles fuerit vel per militiam tenens, secundum jus regni Angliae primogenitus filius patris succedit in totum, ita quod nullus fratrum suorum partem inde de jure petere posset. Si vero fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios quoquaque sunt per partes aquales, (c) si fuerit (c) The Scot-Socagium, & id antiquitus divisum: salvo tamen capitali messuagio primogenito filio pro dignitate auctoritate sue; ita tamen quod in aliis rebus satisfaciet alius ad valorem. Si vero non fuerit antiquitus divisum, tunc primo, genitus, secundum quorundam consuetudinem, tam hereditatem obtinebit, secundum autem quorundam consuetudinem, postnatus filius heres est. Item si filiam tantam tamen reliquerit quis heredem, tunc id obsinet indistincte quod de filio dictum est. Sin autem plures filias, tunc quidem indistincte inter ipsas dividetur hereditas, sive fuerit Miles, sive Sokemannus pater earum, salvo tamen primogenita filiae capitali messuagio sub forma praescripta, &c. Thus Glanvill, harmoniously followed, and almost verbatim of (d) Braston, whose words (d) Li. a.c. 34. on this argument are these: Si liber Sokemannus moriatur pluribus velociis heredibus, & participibus, si hereditas parvissima sit & ab antiquo divisa, heredes (quotquot eunt) habeant partes suas aquales, & si unicum fuerit messuagium, illud integre remaneat primogenito, ita tamen quod alii habeant ad valorem de communis. Si autem non fuerit hereditas divisa ab antiquo, tunc tota remaneat primogenito. Si autem fuerit Socagium villanum, tunc consuetudo loci erit observanda. Est enim con-

tis reading
i. si fuerit Socagium illud antiquitus di-
vsum. See
Reg. Majst.
lib. 2. c. 17.

(d) Li. a.c. 34.
fol. 76. a.
Vid. Flet. 1. 1.
c 9. Parag 15.

sucundo in quibusdam partibus, quod postea non preferuntur primogenito, &c. & contraria, &c. Hereunto let me subjoyn in the third and last place, that common principle amongst us, and obvious in our books, viz. that prescription in *Gavelkynd-land*, as it is not (*i.e.*) needful, so neither is it good. The reason is, whereof I pray take notice with me, that (as Mr. *Lambard* hath it) the custom of *Gavelkynd* is general, spreading it self throughout the whole Shire, into all lands subject by ancient Tenure unto the same, such places onely excepted, where it is altered by Act of Parliament, and therefore 3. *Edw.* 4. 8. and 14. *Hen.* 4. 8. it is said, that the Custom of *Gavelkynd* is (as it were) a Common Law in Kent.

Having thus premised, I shall now make it my endeavour to shape such a resolution or answer to the propounded *Quere*, as may consist with these principles. And briefly, my answer here is negative, viz. that Partition doth not owe it self barely to *Gavelkynd*, either *ex vi termini*, by reason or force of that denomination, or *ratione rei*, from the nature or condition of the land; that property alone of the lands being *Gavelkynd*, or so called, not sufficing to render it partible. First, as for the name, the term, that that will in no wise bear it, is (*I conceive*) a thing sufficiently cleared in our Discourse upon the first Proposition, wherein the term is vindicated from that mistaken construction, by the error of latter times obruded on it, nor can such a derivation any way consist with the premised principles, Partition in *Gavelkynd-land*, from the term or denomination of it, being reducible to none of the there assigned causes of Partition. As inconsi-

(*i.e.* Lamb. Per-
amb pag. 538.
Cokr. up 11
Littl. Secd. 365.)

stent also with those causes and grounds of partition (that dichotomy or bipartite distinction of partible land into, 1 that by Law, and 2 that by Custome) is the attributing that property of partition in *Gavelkyn*, to the nature or condition of the land, there being no mention of any such third sort of partible land to be found in our Books. If it be replied, Yes surely; for objection.

Bracton is expresse for a partition *ratione rei vel terre*, in the places above quoted, that especially where he saith (astol. 374. a.) *sicut in Gavelkyn*, *vel alibi ubi terra partibilis est ratione terra*. Such indeed are his words, and withall tis not to be denied, that such is the nature and condition of *Gavelkyn*-land; being not onely subject and liable to what the Civilians in their phraze are wont to call, *Judicium*, or *Actio familia berciscunda*; *Decommuni* (f) *druidando*, the Feudists, *Adequatio*, *Paragium*, we in our language term it *Coparcenary Land-shifting*, and the like; but, withall so subject to it, as that partition doth alwayes accompany land of that nature, and is indeed as inseparable from it as the contrary from Knight-service land. Whence then is it? Before I answer, observe first with me, for an answer to these passages in *Bracton*, that as before each of them, in one (g) place, we have his *si hereditas partibilis sit*, & *ab antiquo divisa*, so likewise after them, in another (h) place, his *tentementum partibile inter pinnes coharedes* --- & *semper solet dividis ab antiquo*. Whereby (conseruing place with place, for reconciling *Bracton* to himself) we may plainly understand what is meant by those two meane or intervening passages in *Bracton*; namely, that not the base nature of the land, but ancient customes joyn concurrence with it, is intended,

Solution.

(f) See Fulbert's Dialog. part 2. cap. 6.
Of Peasceners.

(g) Fol. 76. a.

(h) Fo. 418. a.
quiem i. quicunque
Etsi, lib. 6.
c 48. parag. 2.

tended, and of him implied in each place, though not expressed, to render the land or inheritance partible. The like help, under favour, must be allowed Glarelli, to reconcile his, *Sciendam autem quod si quis liberum habens Socagium plures habuerit filios qui omnes ad hereditatem equaliter pro equalibus proportionibus sunt admittendi*, lib. 7. cap. 1. fol. 46 v. to his, *Si vero fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios, quibusquis sunt per partes eaeles, si fuerit Socagium & id antiquius divisum*, cod. lib. cap. 3. fol. 49 o. Briefly, were it so that *Gavelkind*-land were partible by virtue either of the name or nature of it, without accession and concurrence of Custom, then all lands as soon as granted out in *Gavelkynd*, whereof examples are obvious, and till the (i) Statute of *Quia emptores terrarum*, frequent, were *ipso facto* partible, contrary to that common and received ground, whereof before, that none are such, i.e. partible with us, (except that descending for want of males to females) but what are so by custome. As then not to the name, so neither to the nature of *Gavelkynd*-land alone, is such partition owing.

And is it then to Custome or Prescription? For the latter, 'tis clearly repugnant to what is before laid down by way of grounds or principles, it being a known rule in our Law, and obvious in our books, that Prescription in our Kentish *Gavelkynd*, as it is not wanted, so neither is it admitted to come in plea. What say we then to Custome? Surely, since neither to the name or nature of the land, nor to Prescription, nor yet (neither) to the Common Law so diametrically opposite to it; to that, I mean to Custome, it is, or I know

(i) Anno 13.

Edw. r.

know not else to what, that this partition mainly owes it self. Agreeable where so is that of (k) Mr. Lambart, (k) Perambul.
R. 1. 5. 4.

where he saith, that no Gavelkynd partition could be chal-
lenged, but only where the custome of division had pre-
vaile, and that, Gavelkynd was maintayned by the manner
of the Socage services, but only by the cause of some for-
mer partition. But if so, then an objection here incets
us resolved into a question thus, What shall then be
said to Gavelkynd land of novel Tenure, upon the
grant of lands, till then happily holden in Demesne, to
one or more persons in Gavelkynd, as was usual before
that Statute of *Quia emptores terrarum*, and until when
a man might create in his land what Tenure he plea-
sed, granting out (as (l) Bracton hath it) in Socage, (l) Fol. 36. a.
what he held in Knight-service, and *e converso*? what,
I say, shall we resolve concerning the point of partition
here? since no particular custome or usage of partition
had ever took place, to give to such division either foun-
dation or precedent. We are here (me thinks) threat-
ned with a Dilemma: for either the land was not par- Dilemma.
tible, and why then called Gavelkynd? or, if partible,
yet not by custome, being but newly turn'd from some
other Tenure into Gavelkynd, and wanting both Time
and (the daughter of it) Usage, (the (m) essentials of a (m) Coke, In-
custome), to render it partible that way. Here then is
work for an *Oedipus*, but the resolution of the main
doubt, to which I will now more closely apply my
stile, will at once clear both.

Truth is then, that 'tis neither from Custome alone,
nor yet from the nature of Gavelkynd-land alone, that
this partition springs, but partly from the one, partly
from the other, and so from both together. It must
be

be granted that Gavelkynd-land, *ex sua natura*, is partible thus far, and in this sense, that by an inherent quality, it is capable of partition by Custome, that indeed may and doth render it partible, as Knight-service land properly it cannot, by reason of a repugnancie thereto in the nature thereof: but in this respect it differs not from Socage Land in general, which by the nature of it, is capable of partition, and by Custome may be, and in many places *extra Cantium* is partible, where the plea (I take it) ought to run, *quod terra illa a tempore, &c.* *partibilitus fuit.* & *partita*, agreeable with that of Glanvill, *si fuerit Socagium, & id antiquitus divisum*, which Bracton seemeth somewhat more fully to explain by his, *si hereditas partibilitus sit, & ab antiquo divisus*. Now then, reddendo singula singulis, that such land is *partibilitus*, i.e. partible, (the former part of plea) is, in Kent, from Gavelkynd, elsewhere, (in particular manours at least) from Socage; that it is, or rather was *antiquitus*, *partita*, i.e. anciently parted (the pleas latter part) is from Custome or Prescription: Partition in the mean while in our Gavelkynd, being but a single property or branch thereof induced by Custome, the term in its full latitude comprehending all other properties accompanying land of that nature and tenure, such as *Dower of the moiety, Suffering for felony without forfeiture of estate*, and the rest contained in the Kentish Cummal, as properly depending of Gavelkynd as partition doth, and in respect whereof the land may as well be called Gavelkynd, as because of Partition.

Objection.

But admitting Socage-land to be generally, by the nature of it, *consuetudine mediante*, capable of partition, as well as Gavelkynd, how comes it then to passe (will

(will some say) that this partition-property is more appropriate to it than Socage-land in general, and that they so much differ in their terms? From the agreement of the Kentish-men with the Conquerour, saith the common opinion, I shall answer that anon. In the meantime, said we not but now, that Custome is the thing whereto we owe this partition? And if so, why then seek we any further after its original & Customs, we know, cease to be Customs, when once they can be traced to their first beginnings, it being the main essential part of a Custome to be of an unknown rise. But be it so, that Custome carties such a stroke here, what kind of Custome is it, or how shall we find such a Custome for it, as may consist with Gavelkynd-land of novel Tenure, whereof before so often? *Hic labor, hoc opus est,* here's the point indeed. Why, in Solution. short it is no other than a custome generally spreading it self throughout the whole Countrey in land of that nature. What elsewhere, I mean in other Shires and Counties, they properly call by the name of Socage, whether free or base, we here in Kent are wont to call by the name of Gavelkynd: or if you please (in (n) Mr. (n) Peramb. Lambards expression) all Socage-service here properly P. 545. So called, is clothed with the apparel of Gavelkynd, and under it, in a large acception, is understood all such land within the County, as is not Knights-fee, or Knights-service land, the term serving here, as that of (o) *Hatom de Feud.* i.e. tit. Socage elsewhere, to contradictually from Knight-service land, as *Fief Roturier*, or rather *Itinerant Item Disput.* Roturier (all other being improperly and corruptly c. 5. *Splm.* called *Fief*, or *Fee*, that is not holden *militia grata*, *scutifero*, p. the ground of all(o) Fees) is used in Normandy to differ- 260. *reince*

rence char from *Fief de Flawers*, or *Noble Fief*. Now into all land of this kind, by a general or universal custome of the whole County, hath this property of partition been introduced; insomuch, as what land was granted out in *Gavelkynd*, by such as before held it in Demesne or the like; as, for want of time and usage, it had no particular custome introductory of that property of partition, so neither did it want the same, the generality of the Custome extending it self to all Censual land, or land letten out for Cens, and sufficing to render it partible, as occasion should be offered, though but newly dimisled. To this purpose (p) Mr. Lambard: *Alibough* (saith he) it were so that the land were never departed in deed, yet if it remain partible in nature, it may be departed whensoever occasion shall be ministred. Granted out, I say, and holden in terms for Cens, conceiving a necessity of that or the like expression in the *Habendum*, or other part of the grant, to make it capable of this and the other properties incident to *Gavelkynd*, not intending here the very numerical word or term (*Gavelkynd*) but that or some other of equivalent sense and signification with it, for example, *Redendo* such or such a sum *de gable*, *de censu*, and the like (whereof, for illustration sake, expect some copies of old grants in the (q) Appendix to this Discourse.)

(q) Scriptu.
157. s. f.

These indeed, &c such as these, were the more usual expressions in elder grants, that of *Tenendum in Gavelkynd*, & the like, being sought of me in vain before M. z. dayes, nor afore-time doth the term occur in any writing or monument whatsoever, save onely in this passage in *Spat*: (St. Austin's Monk and Chronicler at Canterbury) who saith, that anno 1063. (Abbas) tradidit terram

terram de Dene in Gavelkende Blakenham & Albelreda filii Brithmeri. But from Hen. 2. dayes downwards, it is obvious in many grants of land recorded and extant in the Liegers of Christ-church Canterbury, the late Abbey of St. Austin there, and many other of the Kentish religious houses, until about the time of that (7) Statute, *Quia emptores securorum*, which forbidding the letting out of land by any man to be holden of himself, and consequently cutting off all new Tenures, and the creation thereof, stopped the current of all such grants of land in Gavelkynd for the future.

That such an expression, as *Tenendum in (or ad) Gavelkynd*, or the like, was necessary to render the granted land partible, after the custome of Gavelkynd, without the help of Prescription requisite in partible land elsewhere out of Kent, may in part appear by a Record of a controversie happening now full 400 years agone, between one *Burga*, sometime the wife of *Peter de Bending* Plaintiff, and the Prior and Covent of Christ-Church Canterbury, Defendant or Defendant, touching the moiety of the manor of Well, by them granted to her said husband *ad feodi firmam*, challenged by her (7) *tanquam francus bancus sue*, which controversie was debated and decided in Eire, and is recorded in the Liegers of that Church, from whence I shall present the Reader with a copy of it, nor unworthy his perusal in the fore-remembred Appendix, Scriptura 5. Nevertheless, it will here I think be necessary, that we distinguish times: for what at first in Kent was only partible, because of the Tenure in Gavelkynd, I perceive my self was afterwards, in tract of time, partible, and did communicate with Gavelkynd-land in that by Faversham.

(7) Anno 12.
Edw. 1.

(7) See Bratton, lib. 4. tract. 6. c. 13. which laid to chap. 15. eod. tract. the instance there seemeth to be a Kentish case concerning a widow of Gravener (anciently wic-tan Gravener)

property, by being Socage land, though not expressly holden in Gavelkynd; it sufficing at length to shew (as
 (1) Peramb.
 pag 138.)
 (t) Mr. Lamberd hath it) the Custome at large, and
 to lay, that the land lieth in Kent, and that all the lands
 there be of the nature of Gavelkynd. By what means
 this was wrought, or by what degrees our Socage
 land arrived at this universality of partiblenesse, is not
 so easily discovered. That the sundry favours of Ga-
 velkynd custome should intice many to creep into it,
 and by one and one (upon occasion of the intestine
 troub'les that ensued the deprivation of King Richard
 the second,) to shroud and cover themselves under the
 safety and shadow of the privileges that do wait up-
 on it, is an opinion of some, whereunto I cannot sub-
 scribe, as conceiving no Tenures in Gavelkynd to be so
 late as Rich 2. dayes, which this opinion would infer,

(u) Anno 18. Edw. 1.
 with what consistencie with the (s) Statute of Quia
emptores terrarum, made so long before, and prohibi-
 ting the creation of new Tenures, I cannot see. But
 to set the manner passe, the thing (the over-spreading
 the Countrey in processe of time with this Tenure) is
 very obvious and apparent, witnesse an ancient Statute
 (made anno 18. Hen. 6. cap. 2) taking knowledge, that
 There were not at that day within the Shire above xl. per-
 sons, which had lands to the yearly value of xx. pounds,
 without the Tenure of Gavelkynde; and the greater part
 of the Countrey or well nigh all, was then within this Te-
 nure.

To proceed, ascribing this property of partition in
 Gavelkynd land to the custome of the Countrey, what
 shall be said then to the partible land (more or leffe)
 abroad in other Countys? is such Gavelkynd land, and

so to be called, or not; or is it from *Gavelkynd* that such partition there obtains? I conceive not. For first, our Kentish *Gavelkynd Custome*, considered collectively, with respect to all its branches, is not to be restrained to this one particular property, but (as before is intimated) consists of many other as singular properties besides, and which may as well challenge a share and right in the Customes name, as may that of Partition, such as is *Dower of the Moyety, not to forfeit lands for Felony, and the like;* and though in point of Partition it may be like ours in Kent, yet in other properties incident to our *Gavelkynd*, it might, and no doubt but doth differ from it. Besides, that such partible land elsewhere should be called *Gavelkynd*, will not stand with our premised grounds, excluding Prescription in *Gavelkynd* land, whereas in such places abroad, though haply not in whole Counties, yet in particular Manours, I conceive it's necessary, even in their *Gavel-lands*, whereof I find mention made in several manours out of Kent, as some in Kent, to shew, *quod terra illa a 1010 tempore, &c. partibili fuit & partita,* the accustomable actual partition of it being there as necessary to be pleaded and proved, as its capability of such a property. Add hereunto, that if all partible land were *Gavelkynd* rendred (such by partition alone) then were
 (x) *Brattons, Sicut de Gavelkynd vel alibi ubi terra est partibili ratione terre;* an improper expression. We
 are told that this Custome of *Gavelkynd* partition takes place, (hath done at least) in other countries; or
 counties besides Kent, and *Littleton* instanceth in
 North-Wales. But what custome, I pray? a custome
 indeed, like to that in the Scottish (y) Socage land, of
 & 17.

(x) Fol. 374 a

(y) *Skenas**Annot. in**Reg. Majest.**1612 cap. 21,**& 17.*

partition; that's true, and testimonies of it are obvious, such as, besides that of *Littleton, Statuum Wallie*, the Welch History, and some A&s of (x) Parliament. But still, I say, no *Gavelkynd*-custome, taken in its true, plenary and compleat acceptation, comprising all the properties of it obvious in the *Customal*. As then for other Country-men communicating with us of Kent in the Tenure, I conceive it first came up, by way of imitation of our example, in Ireland especially, and amongst the Welch-men, in whose Vocabulary or Dictionary the word is sought in vain, as it is also in that old Statute which concerns them, (*Statuum Wallie*) where though mention may be found of a custome there obtaining of partition of their lands, like to that of our Kentish *Gavelkynd*, yet without any one word of *Gavelkynd*. And if perhaps it may be found in their deeds, charters, or other records, yet (as one (4) saith in a case not much unlike conditioned to this of ours, whose words with very little variation I shall therefore take up here:) *Sospicari tices hanc vocem pluribus illorum chartis ait: sive publicus, non tam illorum quam pragmatisorum usu ac instituto inventam.* i.e. 'tis to be suspected that it had its imposition, and was first transmitted hither by our Lawyers, who borrowed the term to make use of it for illustration sake, like as of late (I am perswaded) the Parliament did in that Stat.
 34. Hen.8. cap.26. where the term of *Gavelkynd* haply is but borrowed, to help describe and illustrate that partible quality there mentioned of the lands in Wales, which I am the more induced to conceive, because in a former Statute concerning Wales, namely that of the 27th of the same King, cap.26. making mention of
 this

(x) See 21.
Edw.1. 34.
Hen.8 26. &
Girald. Cambrensis. Itinerar. Camb.
lib.1. c. p.7.
 By the way,
 how do our
 Britains claim
 descent from
 the Trojins?
 with them
 the eldest son,
 by prerogative
 of primogeniture,
 monopolized the
 whole inheri-
 tance. Where-
 of see Mr.
Seld. Jan.
Angl. lib 1.
pag. 24. Vñt.
Besitzbuch.
Hist. lib.3.
pag. 207.
 (4) *Rover. II-*
Iustit. Hist.
Monast. S. Jo.
Reomien. p.
618. num. 168.

this partition, *Gavelkynnd* is not at all remembred. In imitation then (as I conceive) of the Kentish-men, the generality of whose parable land of long time hath notoriously been known by that title, and whose lands alone of all the Counties of England at this day be of the nature of *Gavelkynnd* of common (*b*) right, this (*b*) *cote*, ^{its particu-} name or term of *Gavelkynnd* in lands elsewhere of like ^{fol. 140, a.} condition in matter of descent, hath been taken up and is retaineid.

By that which hath been said, I may be thought to Objection. incline to their opinion, who hold that *Socage* and *Gavelkynnd* are Synonyma, terms identical, and of one and the same signification here in Kent, and that consequently what land here is of *Gavelkynnd*-nature, is of *Socage*-tenure; as on the other side, what land is of *Socage*-tenure is of *Gavelkynnd*-nature. I answer, No: for I require in this case, I mean to make *Socage* land here in Kent *ipso facto* partible, after the custome of *Gavelkynnd*, that it be granted out and holden in *Gavelkynnd* (*c*) expressly, or in terms equivalent, as I said before, yet with that distinction oftentimes wherewith I there qualified it. Notwithstanding, I am not of their mind, who distinguishing between free and base *Socage* in Kent, make the natures of their descents divers; the free *Socage* (say they) descending to the eldest alone, the base falling in division between him and all his brethren. Thus (*d*) Mr. *Lambard* in the person of others, to help justifie whose distinction, with the inference upon it, he there exhibits an Inquisition taken after the death of one *Walter Cutpepper*, making mention of divers parcels of land and annual rents holden by the deceased at his death, some in libe-

(c) As in the Appendix,
Scripta 4, 6, 7,

(d) *Peramb.*
pag. 593.

rum feodum, others in *Gavelkynd*, the former of which, by the verdict of the Jury, was to go to the deceased's eldest son (*e*) alone; the latter, in common amongst him and the rest of his brethren. Thus the Inquisition, which (as Mr. *Lambard* there follows it) cleerly distinguishes free Socage from the *Gavelkynd*, interpreting, it seems, *Liberum feodium* thereby Free Socage, and it may be rightly; however I crave leave of dissent, and (as it is but fit) shall give my reasons: For my part, I never found Free Socage any where expressed by that term, or in Latine rendered *Liberum feodium*, nor perhaps to those of more diligence, and more conversant with our Law-records than my self, hath it ever occurred under that notion. Nor have I met with any Free Socage, as this here, not subject to the rendering of some kind of service, either *in denariis*, or

Liberum feodium. By *Liberum feodium*, I understand sometime *Feodium militare*, which is often in old Records

(f) In Archiv. called *Liberum feodium*. In a very ancient (*f*) Rental of Southmalling manour in Sussex, we have this title:

Liberi feodi, and under it: *Godfridus Walensis tenet III feodos milit. in tenemento de Balling, & quartam partem unius feodi apud Terring per liberum servitium armorum suorum.* *Willmu de Bransa tenuit apud Adburtonum feodium militis, per liberum servitium armorum suorum.* And so some others. Apposite here is

(g) Lib. 5, vol. 329. that of (g) Bratton: *Notandum* (saith he) *quod in servitio militari non dicitur per liberum servitium, & ideo quia constat, quod feodium tale liberum est, &c.* Sometime also by *Liberum feodium*, I understand (what I conceive it doth principally denote unto us) *Frank Fee*, that is, by the Feudists definition, such *pro quo nullum*

*nullum omnino servitium (b) prestatur, and therefore is (b) Vulsteiu
of them reckoned inter Feudastræ, or Fenda impropria.
And such as this seemeth to be meant by Liberum feo-
dum in that Inquisition, because it is there in terminis
expressed to be holden (just after the manner of Frank
Fee, by the precedent definition of it) *absque aliquo ser-
vitio inde faciendo*. And if Frank Fee, then in proba-
bility not Socage: for as all the land in the Realm (say
our Books) is either *Ancient Demesne*, or *Frank Fee*, so
none (say they) is to be accounted *Ancient Demesne*,
but such as is holden in (i) Socage. Frank Fee then
being opposed to *Ancient Demesne*, which is Socage,
cannot it self be Socage. Nor will *Bractons* distinction
of Socage into *liberum* and *villanum*, applied to that
difference in Mr. *Lambard*, of free and base Socage, by
which the one should consist of money, and the other
of base services, be warranted (as himself there observes)
from the ensuing Inquisition, some lands being therein
denoted to be of *Gavelkynd*-nature, which neverthe-
less do yeild none other but money alone, and none
there of that nature charged with works, besides that
of Suit of Court, improperly called Works, as not
coming under the notion either of *Manuopera*, or *Carro-
pera*, to which double head all works of this kind are
wont to be referred.*

Hence let none perswade themselves, that *Gavel-
kynd*-land was not, or by its nature is not liable to
Works: for albeit that 66. of King *Ina's* Laws in the
Archaion, seemeth to counter-distinguish *Gafol*, and
Work, and though moreover *Gafoland* and *Werkland* *Gafolland*,
occurr in some manours out of Kent, as of a distinct *Werkland*,
and different nature, (yet both servile, and opposed to

(b) *Vulsteiu de Feudis*,
lib. I. cap. v.
pag. 353.

(i) *Corwall 13-
terpreter, verb. Anciens
Demesne, from
Fitzherbert.*

what there is called *terra libera*, denoting, I suppose, Free Socage) yet most certain it is, that both *Gablum* and *Opera* do often meet, and are found in *Gavelkynd-land*. Witnesse the old Custumal of Monkton manour in Thanet, belonging to the Church of Canterbury, mentioning the particulars of what servile works the Tenants there stood charged with for the 18 Swo-

(k) *— terram
trium aratro-
rum, quam
cavissi: An-
glice dicunt
the Two
Ungis, &c.
as in the
Charter of K.
Offa, in the
Antiquities of
Canterbury,
p. 211.*

lings (so many plough-lands, I take (k) it) holden of the Monks in *Gavelkynd*. Witnesse also this passage in King Johns Charter made to Huber the Archbisshop, for the changing *Gavelkynd-land* into Knights-Fee, at large exemplified by Mr. Lambard, Peramb. pag. 531. *Xenia, Averagia, & alia opera qua fiebant de terris iis-
dem convertantur in redditum denariorum equivalenit.* Witnesse in the third and last place (not to multiply instances in a case so cleer) an Inquisition found after the death of *Isabella de monte alto*, widow, sometime of Orpington, recorded in a Lieger of that Cathedral, whereof expect a copy in the Appendix, Scriptura 10.

'Tis true indeed at this day, and time out of mind (haply from *Richard* the seconds(¹) time) such servile works (properly called Villein-services) have been, as they still are, intermitted, or rather quite ceased; insomuch as all our *Gavelkynd-land*, in point of service, now differs nothing from Free Socage, as it stands described and defined of *Braeton*; being such *ubi sit ser-
vitiū in denariis*, (to use his own words) all the Tenants burthen, his whole service, being onely *servitium
crumene, pecuniary*, such as payment of money for rent, suit of Court, and such like; nay, in many grants of land in *Gavelkynd* that I have seen, I find no tie at all upon the Tenant, no covenant or contract between his Lord

(1) See Spel-
mans Gl. Sirry,
verbo *Lazzi*.

Lord and him, to require of him any such base services, there being *us communiter*, and regularly, a reservation onely of rent in money, suit to his Court, or the like : yet I must tell you (as a reason hereof, in my judgement) that, though *Gavelkynd*, in the genuine sense, sound land letten for *gable, cens, or rent*, consisting chiefly in *denariis*, (whence in an old (^(m)) Custume of Eastry manour in Kent, I read : *In eodem manu-
rio mutati sunt octo Cotarii pro Gavelkende. Medieferm
teneat unum messuagium, tres acres, qua solent esse Cotari.*
modo reddit xl. d. de gable, and so divers more, which haply will be better understood, if I add what occurs in an old Accompt-roll of the Archbishops manours for the year 1230. in Charing Bailives receipt : *Et de
xiiij. s. iiiij. d. de fine Cotariorum, us Cotarie sue ponerentur ad redditum :*) yet commonly upon such grants in *Gavelkynd*, the Tenant parted with such a sum of money to his Lord, *ingersumam*, i. e. in consideration of ^{Gersuma.} that grant, and by way of Fine, as may seem equivalent to the base services otherwise imposeable and to have been charged upon that land, and upon the Tenant in respect thereof ; or if not, probably, (as in *Gavelkynd*-land, by virtue of King Johns fore-mentioned Charter, turned into Knights-fee) he had his rent enhanced and augmented to an equivalent value of his services to be redeemed ; the cause in chief of the excuse of *Gavelkynd*-men from base services of latter times, and at this day, being (I conceive) no other than the Tenants buying them out, and consequently the change of the same (as Littleton hath it of Socage in general) into money, by the mutual consent of Lord and Tenant, whereof expect some examples to be presented

(m) In Ar-
chiv. Eccles.
Canz.

in the Appendix, Scriptur. 11, and 12. In the meantime have herean instance or two taken from some old Accompt-rol's of the Archbishops manours of this and that summe paid & received for enfranchising the land from customes and services, and changing it into Knights-fee, whereof in the last-remembred Accompt-roll, and in the receipt of Cering (now called Charing) manour there: *Et de ij. s. ix. d. ob. de incremento redditus Thoma de Bernfeld de termino Sancti Johannis, ut terra sua de cetero sit libera de consuetudinibus per feodum militis. Et de xiiij. d. quad. de incremento redditus Thoma de Bending, ut terra sua sit libera per feodum militis, de termino S. Johannis.* And so some others there, as also in Maidstone and other Archiepiscopal manours, and such may well be reckoned among lands of that sort, which in a copy of the book of Aid, cited by (n) Mr. Lambard, are noted to be holden in Knights-service, *per novam licentiam Archiepiscopi.* But to return to our Gavelkynd, which if not extensive to Free Socage, they may seem to stand in need at this day of some other character (to keep them unconfounded) than Bratton in the definition and description of the latter doth propose, in regard the service of both equally consisteth in money.

To recapitulate now what hath been delivered concerning partition in Kentish Gavelkynd-land: It is (as hath been shewed) neither from the name, nor from the nature of the land alone, nor from prescription, nor yet from any particular custome, that this property there proceedeth; but partly from the nature of the land, and partly from custome, not (I say) a particular one, but a general custome extended throughout the whole

(n) Peramb.
pag. 533.

whole County in censual land, or land letten for Cens, or (what is all one with it) *Gavel*, or *Gafel*, to say, holden in *Fief* (or Inheritance) *Rentier*, as called in Normandy; and other parts of France; the Antiquity whereof, and how beginning in Kent, and why more general there than elsewhere, shall be the argument of our next Discourse.

PROPOSITION III.

The Antiquity of Gavelkynd-custome, (in point especially of Partition) and why more general in Kent than elsewhere.

Master *Lambard* (o) inclines in his opinion (o) *Peramb.* to conceive this custome brought hither ^{PAG 545.} out of Normandy by *Odo* (Earl of Kent, and bastard brother to King *William the Conquerour*) and that we received it thence by his delivery; an opinion inconsistent with the *Custumal* it self of his own Edition, the very close whereof (if it may be credited) layeth challenge to the custome before the Conquest. For my part I conceive it may carry an Antiquity far greater than the time of the Norman conquest, being probably as old (in the name I mean, I will not say in all the properties of it, though happily I may in point of Partition) as *Gafoland* it self, from which (if considered in the term) it as little differs in sence as in syllables; to what our Saxon Ancestours called *Gafolland*, their Successours, and we

at this day (for a fuller expression of the nature of it) having added one syllable, and so calling it *Gavelkynd-land*. Yet I would not be thought of his (*p*) opinion, who would bear the world in hand, that the Commons of Kent continue their priviledges by means of a composition entred with the Conquerour at Swans-comb. No, under favour, we owe them not to that, or any other such like specious stratagem, nor are beholding either to *Ssigand* the Archbishop, or *Egelfine* the Abbats policie to contrive, or to their and our Countrey-mens valour to compasse, their continuance for us in such a way. I am not so prodigal of my historical faith, as to cast or squander it away upon commentitious fables: for I account this no better, however swallowed of the vulgar, whom I dare not to encounter in any dispute about it, as despairing of successse, though using never so effectual convincing arguments to disingage them in the belief of it; and therefore appealing from them, I shall apply my self to the more literate and judicious, by intendment not so tenacious of a specious tradition, but that they can with patience both hear it questioned, and, if occasion be, refuted; not unwilling to desert it, if, upon trial, it may prove unsound and spurious, and accounting it as thank-worthy

To discover an old error as acceptable, as to deliver a new truth, especially since truth is not more often, nor more easily, lost by too much altercation, than error is contracted and continued by too little. I will not undertake, nor do I mean to make it my task here, to shew how it came to passe, that *Gavelkynd* is in a manner proper, and *Villenage* improper onely to Kent, no other County partaking with it, either in that degree of commonnesse and

(*p*) spot, in the lives of the Abbats of S. Augustine at Canterbury, cited by Mr. Lambard, both in his Glossary before his A-chaion, verb. *Terra ex scri-pto*, and in his Perambul.

pag. 18.

and universality wherewith Kent is overspread of the former, or in the immunity it enjoyes from the latter; the finding out the true cause whereof hath not escap'd my diligence, although my skill I confess I haue. But, be that as it will, and albeit I cannot in the affirmative shew what was, yet in the negative, that this was not the means whereto we owe the continuance of our Gavelkyn-customes at and since the Conquest, shall be my next assay to prove, and that by shewing what more than suspition of errour this Monkish relation (for such it is) deserveth to fall under with men of unbiassed and disengaged judgements. But first, will it please you to hear the story it self, as it is already Englished by the illustrious Authour of the Illustrations upon the Poly-olbion, pag. 302. who there suspects the same as not of clear credit.

When the Norman Conquerour had the day, he took his journey towards Dover Castle, that he might with the same subdue Kent also; wherefore Stigand Archbisshop, and Egellin Abbat, as the chief of that Shire, ob'c ving that now whereas heretofore no Villeins had been in England, they should be now all in bondage to the Normans, they assembled all the County, and shewed the imminent dangers, the insolence of the Normans, and the hard condition of Villenage: They resolving all rather to die than lose their freedome, purpose to encounter with the Duke for their Countries liberties. Their Captains are the Arch-^{(q) Green} Bishop and the Abbat. Upon an appointed day they meet all Lombard hath at Swanescomb, and harbouring themselves in the woods, it: a likely wish^(q) boughs in every mans hand, they incompaſſe his time of the way. The next day the Duke coming by Swanescomb, year, being about November, seemed to see with amazement, as it were a wood approach-^{ing}

ing towards him, the Kentish men at the sound of a trumpet take themselves to arms, when presently the Archbishop and Abbat were sent to the Duke, and saluted him with these wordes: Behold, Sir Duke, the Kentish men come to meet you, willing to receive you as their Leige Lord, upon that condition, that they may for ever enjoy their ancient Liberties and Laws used among their Ancestours, otherwise presently offering war; being ready rather to die, than undergo a yoke of bondage, and lose their ancient Laws. The Norman in this narrow pinch, not so willingly as wisely, granted the desire: and Hostages given on both sides, the Kentish men direct the Normans to Rochester, and deliver them the County, and the Castle of Dover.

Thus Spot, St. Austins Chronicler at Canterbury, living under Edw. I. he, I say, and onely he, and such others as of latter times write after his copy: for before him, and in that Interim of more than 200 years, between the Conquest and the time he wrote, no published Story, no Chronicle, no Record of any kind, Kentish or other, may be found to warrant the (r) relation; a matter the whilest so remarkable, as, if true, not likely to escape all our Historians pens that were before him, those especially about the Conquest.

(r) See Camb. *de* Britann. In Kent.

(f) Hist. of Croyland Abbey.

Amongst which (f) Ingulphus silence is the more remarkable, since he is so particular and punctual in relating and recounting the Conquerours oppugners, and their proceedings. When afterwards Rochester Castle, kept by Odo the Conquerours brother, against William Rufus in the year 1c 88, was by him besieged (a thing of as small moment at least as this) why, all the Stories with one consent were full of it, particularly

larly Malmesbury and Paris (amongst other occurrences) tell of a much declined nick-name, wherewith those were threatened that should refuse to come to the Kings assistance in that action, which the former hath *Nidering*, the latter, *Nithing*, quod Latine nequam sonat, say both, and rightly, if it come, as I conceive it may, from the Saxon *nīþe*, i. e. *nequissia, malitia*, as it is in several places found in their (1) Psalter; a nick-name this, of such infamy, as fastened upon the most detestable and barbarous Villeins, such as were guilty of 72.8. in marg.

(1) Psal. 54.

17 Psal. 51.1.

in marg. Psal.

Laws calleth *Weilreis*, a term (identical, I take it, with *Walarups* in the *Legis Beior.* tir. 18. cap. 3. parag. 1.) which *Texius Roffensis* thus illustrates in a place: *pal-neaf is niþinger orðe. gif hja offacen pille to þ mid eahta 3 feoppntig fulbopenha Þegenæ.* i. e. (according to the Latine version in *Fornalensis*, where this Law occurs, as the 21th of those of King Ethelred, at Vanelting:) *Wealreas. i. mortuum refare est opus nithingi: si quis hoc negare velit, facias cum xlviij. Thaynus plenè nobilibus.* This (of *niþinger orðe*) is that surely which the old Glossary (new set forth) at the end of *Hen. I.* afore-said Laws, harps upon, in the word *Refare*, and is there glossed by *opus nithingi*, as also in the word *Wealreas*. But to return to our Story, that I mean of the siege laid to Rochester-castle, which though of as small, if not less, concernment than the other here in question, could find many Chroniclers to record it, and must this needs escape them all, till Spot had ^{(u) Texitis fal-} ^{sis in uno, red-}
^{ditur suspellere} ^{in omnib. Fa-}
^{rinate. de testab.} ^(u) ^{q. 67. n. 3.} his commixture of (u) a falsity about Villenage,

affirming it was not in England before that time, which is apparently false by choice of testimonies, both from our Laws and other Saxon monuments, so obvious as I will spare to repeat them, setting that aside until I have dispatched the main matter of the Story, the composition, I mean, between the Conquerour and the men of Kent, with the occasion of it, which as it wants the warrant of confirmation by other elder Historians, not onely silent of it, but agreeing in asserting an universal conquest, so in flat contradiction of it, we find cleer testimony in *Florentius Wigorniensis* and *Roger Hoveden*,

*Kent conque-
red by the
Normans.*

of our Counties fellow-suffering with her neer and more remote neighbours of Sussex, Surrey, Hampshire, Middlesex, &c. in the devastations, depredations, and other miseries of a countrey invaded, subdued, and (at least in some parts) harried by the Norman Conquerour, immedately upon that signal victory of his over the English, at the place where afterwards he founded that Abbey, from the Battel there fought, called Battel-Abbey in Sussex. You shall have my Authours own words: *Intraea* (say they, ^(x)) having but newly told the Story of that fatal battel:) *Comes Guilelmus Suthsaxoniam, Cantiam,*
Rog. Hoveden, Suthamtonensem provinciam, Suthregiam, Middelsaxo-
niam, Herefordensem provinciam devastabat, & villas

*(x) Flor. wi-
gorn. an. 1066.
Rog. Hoveden,
fol. 258.2.*

cremare, hominesque interficere non cessabat, donec ad
willamque Beorham nominatur, veniret: &c. To this
 let me add a passage from the Story of the same Spot, where, after mention made of an Annuity, or Rent-charge given to his Abbey, by one *Sulburga*, the Lady of *Brabourne*, about the year 861, he subjoyns this:
I Nam redditum (saith he) & jugum terra apud Horton,

& terram de Hengestebell juxta Wevelesburgum, Hugo
de Manford ab aliis, cui & Episcopo Bayeuxi Willielmu
Bastardus fere omnes terras Cantie consulit, contradicen-
tibus monachis, sed minime prevalentibus. Now if the
Conquerour seized almost all the Kentish lands, and
gave them to his brother, the Bishop (y) of Bayeux,
and Hugh Manfort, (as you may find further verified
by Domesday book, with cleer evidence of the like
distribution generally throughout the Kingdome,
whence that of (z) Ingulphus : Deinceps ergo comita-
tus & baronias, episcopatus & prelatias totius terrae suis
Normannis Rex distribuit, & uix aliquem Anglicum ad
honoris statum, vel aliumque dominij principatus, ascen-
dere permisit :) how is it likely that Kent should elcape
or speed so well, as by that specious Story of the
Swanescomb encounter and accord, the Monk would
bear the world in hand ? Truth is, by the way, the
Harpies of those rapacious times (the Conquerours
kinsmen and countrey-men) laid about them notably
for the farrest morsels they could find in most places,
out of Church-lands (a) especially : (tempore autem
predicte Normannorum, quo Dux Willm cum suis ar-
matis copiis Angliam intravit, vastavit, penitus & sub-
egit, omnia in pradam data sunt, &c. quoth Gervase the
Monk of Canterbury) and what with force on the one
hand, and flattery on the other, obtained so many, as
at length the pressure gave occasion to the Religious
of those times for a general complaint thereof unto
the Conquerour, with petition for redresse, and a-
mongst the rest, the Monks both of St. Austin, and of
the Cathedral at Canterbury, particularly seem to
joyn in the Remonstrance ; whereupon (for the for-
mer)

(y) See Orders
Vital. ann.
1070.

(z) Hist. croyl.
fol. 512. b. See
also Eadim.
Hist. pag. 6.
Usus ergo, &c.

(a) See the
Epistle in the
Appendix,
Scriptur. 21.

mer) the Conquerour directs a writ, brief, or charter to *Lanfrank* the *Archbishop*, &c. for redresse of what wrong in that kind had betid the place, of such tenor as you shall find in the Appendix, Scriptura 13. And for the Cathedral, besides a particular charter granted by the Conquerour to the Monks there, *Uis predicti monachi posestatem habeant terras suas dandas & tollendas ubiquecumque eis melius visum fuerit, quicunque eas teneat*: &c. they shew a general writ of his to *Archbishop Lanfrank* and others, for the restitution and reseizing of whatsoever had been taken from the Bishopricks and Abbeys all the Kingdome over, whereof it leems they had particular occasion to make use, both by their care to record it, (as an evidence much concerning them) in their Leigers, as also by the record they likewise there keep of the plea between their said *Archbishop*, and the foresaid *Odo*, at *Pinenden*, whereof, from the Records of the Church of *Rochester*, which it equally concerned, Mr. *Solden* in his Notes upon *Eadmerus*, pag. 19. hath given us a copy; a pregnant evidence for our present purpose in many respects. This last named Charter, because it may be the first that ere you saw of this nature in print, and may conduce to a right judgement of *Spots Story*, I shall advizedly recite at large in the Appendix, where you shall find it, Scriptura 14. But (no longer to digresse) be further advertised (good Reader) that whereas by *Spots* relation, the Conquerour was oppoled by the Kentish men, in his march through West Kent towards *Dover*, and after composition with them at *Swanscomb*, was by them conducted to *Rochester*, and put in possession of the County, together with
(12.2) the

the castle of Dover; the very truth is, by the more credible relation of (b) *Gulielmus Petavensis* (a writer of the same time, and the Conquerours own Chaplain, followed by (c) *Ordericus Vitalis*) the Conquerour, after his victory neer Hastings, made not first to clef. lib. 3 pag. London, and then to Kent, but after settling his affairs about Hastings, presently took his journey towards

Dover (d) by the way of Romney, where having venged himself of the savage kind of Inhabitants, for the slaughter of certain of his men, by some mistake landing at that place, (of *Petavensis* called *Romanarum* for *Romaneium*, as of *Ordericus* rightly named) he thence advanced on to Dover; whither, though a numberlesse multitude of people had betaken themselves, as to a place, by reason of the castle, inexpugnable, yet dismayed with the Conquerours approach, the place with all readinesse submitted to him, who, after eight dayes fortification of it, marching from thence, at a place not far from Dover, the Kentish men of their own accord came in to him, sware him fealty, and gave hostages for performance. Marching then onward, and understanding where *Stigand* the Aichbishop, with the Earls *Edwin* and *Morcar*, and other English Nobles (who conspired to set up *Edgar Etheling*, King) were assembled, he made towards them with a strong power, and sate down not far from London; whence certain companies issuing out against him, he, with 500 of his Horsemens soon repelled them, forcing their retreat back into the citie, not without the slaughter of divers by the way. This action was followed with the firing of all buildings whatsoever behither the river (of Thames.) Passing over which,

(b) *Gesta Gu*l*ielmi***
l*et. Duci*, &c.
pag. 204.(c) *Hist Ec*cl*esiast***
pag. 502.(d) *Herewith concurreth Malmesbury*,
fol. 116. b.*castellis Do*veri**, &
*f*estinat* deditio*nem**
*re terram su*m**
*nomini spar*effit**, (*Con*quistor**) *Lor*doni** *pet*it**,
&c.

the Conquerour removed to Wallingford, whither Archbishop *Stigand*, and other of the English Nobility followed him; and deserting young *Edgar*, made their peace with the Conquerour, receiving him as their Sovereigne: whose example the Londoners soon following, rendred themselves also to the Conquerour, and (as the Kentish men had done) delivered him hostages; such, both for number and quality, as he required. Thus *Gallicus Pittavensis* followed (as I said) by *Ordericus Vitalis*, a writer of, as it were, the same time: By which relation it is evident, that the Conquerour intending for Kent, did not set out (as *Spost* insinuates) from London or those parts, but on the contrary ere he went to London, made himselfe sure of Kent, by taking Dover castle, (the Lock and Key, as one (*e*) calls it, of all the Kingdome) and from thence, after the Kentish mens voluntary subission to him, marcheth towards London. Now, from the silent passing over most of these particulars in other writers, of and about this Authours time, all save onely *Ordericus Vitalis*, let none call the truth of them in question, since their undertakings were for compiling a more general Story, than that of the Conquerour alone, who therefore were more succinct and summary in their relations, advisedly (by their own confession) pretermittting many particular passages. *Ingulphus*, after a summary relation of the Conquerours acts at his first coming in, excuseth his brevity thus: *Summatim namque ac carpitum victoriosissimi Regis gesta narro, quia secum sequi annuatim, passimque scribere gressus suos non sufficio.* Whereas, on the contrary, this Author (*Pittavensis*) undertaking onely the acts and life of the Conque-

(e) *Mattib.*
Paris, Hist. in
B. 3.

Conquerour, (whose Chaplain he was) sat himself to expatiare in all memorable occurrences. . Besides, (which I cannot but observe, as tending much to the credit both of our Authour and his relation) although *Gemistensis* (a writer of the same time) bark the most of thele passages; yet excusing himself also for his studied brevity, he refers the Reader to our Authour, for fuller intelligence, making mention of his Story (like as *Ordericus Vitalis* also doth) with great applause, in these words: (f) *Hic per anticipationem breviter ini-*
(f) Lib. 7. cap. 11.
matis, ad finem gestorum Wilhelmi Regis Anglorum, &
Ducis Normannorum, de quibus fastidio Lectorum com-
pendiosè consulentes, quadam perfrinximus, veniamus.
Si quis vero plenius illa nosse desiderat, librum Wilhelmi
Pictaviensis, Luxoviorum Archidiaconi, eadem gestas i-
cens copiose, ita eloquenti sermone affatim continentem, le-
gat. Of whom *Ordericus Vitalis* (g) further thus: (g) *Hist. Eccl.*
clef. lib. 3.
Ipse siquidem predicti Regis Capellanus longo tempore
existit, & ea quae oculis suu videtur, & quibus interfue- propè fin.
rit, longo relata vel copioso indubitanter enucleare stu-
duit.

Thus far then in way of refutation of Spets Story in grosse, or in the general; a meer Monkish figment, I conceive, politikely devised, and with a design to bring a perpetual obligation on the Kentish men to his own Abbey, as owing (forsooth) the continuance of their ancient liberties partly to a quondam Abbot of the place: even much such another, as that of the Devils attempt upon S. *Pancras* chappel to overturn it (where, of in the Antiquities of Canterbury, pag. 61.) smel-ling too much of the Legend, and invented doubtlesse for the greater glory of the Abbey.

Now

Now descend we to the result of the Story, and the inference upon that meeting, made by *Spots* and (*b*) his followers, which in short is, that hence, or hereupon Kent received her pristine privileges, instancing (some of them) in *Gavelkyn* for one, and particularly that hence, as formerly Kent (participating in common with the whole Kingdome in that point) had no Villeins, so by that means from henceforth (by a singular privilege above other countys) it never had any. Indeed, (which I note as adminicular to this assertion) among the articles by which the Auditours of our Cathedral were to take accompts of the Bailives of that Churches manours out of Kent, recorded in an old Lieger there, these are some : 1. *De Censariis Nativorum quod possint exire tenuram Domini ad laborandum & operandum extra, & statim post opera redire.* 2. *De finibus Nativor. pro filiabus suis maritandis infra tenuram Domini.* 3. *De finibus Nativor. post mortem patrum suorum, quod possint habere terras quas patres habuerunt, tenendas ad voluntatem Domini, secundum consuetudinem manerium:* Whereas in the like articles for the manours in Kent, not one of these occur; but, as if improper for the manours of that county, all are quite omitted, to the manifest confirmation of *Spots* acquitting Kent of Villeins and Villenage. True, I confess, nor can it be denied as to those dayes, the time I mean when those Articles were set on foot, which, judging of their age by their character, seemeth to be about *Edw. 2.* dayes: but that there were none at, or after the Conquest (the point in issue) is under favour an assertion little truer, if not fully as false, as that other of his concerning the composition with the Conquerour. For proof whereof,

(i) Lamb. Per-
amb p 1g. 30.
Author Anti-
quit. Britan.
in vita Sti-
gandi Archiep.

of, to say nothing of Hubert (the Archbishop of Canterbury in King John's time) his acquitting both his own and the Monks possessions, amongst other bur-

*Villani in
Kent.*

thens, from that of (i) Villenage, because possibly this

(i) Godwin,
Catal. of BB.
in the life of
Hubert.

priviledge might concern their possessions elsewhere, and not in Kent : I appeal to a writ of King Edw. 2.

anno regni sui septimo, to the Assessors of a Tenth and Fifteenth in the county of Kent, in the behalf of the Abbat of Spots own Abbey (St. Austin's) and his Villains, whereof you may find a copy in the Appendix here, Scriptur. 15. followed with another of a very rare deed or charter of about H. 3. time, taken from an ancient Manuscript Chartulary of the very same Abbey, now remaining with Sir Thomas Cotton, which I must confess to owe to the courtesy of my late learned friend Sir Simonds D'Ewes, clearly shewing Villenage to have obtained and taken place in Kent, and even in our Gavelkynd; a Tenant to that Abbey of certain land in Gavelkynd doing homage to the Abbat there for the same, expressly as for Villenage, and covenanting to perform as much service to his Lord, as to the said Villenage apperteined, as by the deed (which whether I should more value for it self, or for the hands sake that reach'd it to me, is with me some question) more fully may appear, Scriptur. 16. Add hereunto, that the Laws of Hen. 1. cap. 76. make mention of *Villani* in Kent : *Differencia tamen Weregildi multa est in Cantia Villanorum & Baronum.* So that chapter is concluded. To ascend yet higher, in Domesday-book, and in the Kentish Survey there, *Villani* frequently occur, by which, if, after the common opinion of modern and some elder Lawyers, Bond-men (such as of

(k) Cap. 2.
Sect. 28. pag.
169..

latter times and at this day we call Villeins) are not to be understood, but rather (after the (k) Mirroir) *Cultivars de sief demorants en villages uplande*; car de villein est dit villein, &c. or, in Fitzherberis expression: *Base tenant, qui fesoit villein service, mes ne fait pas villein.* i.e. A base Tenant, that doth Villein service, but nevertheless is no Villein; then, to put the matter out of all doubt, know that besides *Villans*, you may with-all find, and that in divers several manours too in that Kentish Survey (particularly in the Bishop and Church of Rochesteris manours of Southfleet, Stone, Falkham, Woldham, Trottesclyve, Snodeland, Halling, Frendisbury, &c.) expresse mention of *Servi*, which of all hands is confessed to denote men of servile condition, bond-men, or bond-slaves, *Villeins*. And take along withyou this note by the way, that the pretended composition in *Spot*, by which he will have Kent for the future conserued in her immunity from Villenage, did for many years antedate the time of this Survey; that, pretending to the Conquerours first coming in, this, not beginning, at the soonest, untill about fourteen years after, I might follow this with some pregnant passages to this purpose, such namely as that in the old

(l) In Armar.
Eccles. Cant.

(l) Customal of Ickham manour in East Kent: *Et isti Cotorii nusquam capient auram nisi apud Ickham vel Trembling:* such (secondly) as that in a like ancient

(m) In Ar-
chiv. Archiep.
Cant.

(m) Customal of Tenham manour: *Qualibet Cotoria tenet unum messuagium, tres acres, & debet metere 8 a-*

creas, &c. Et facient quicquis serviens de manorio prace-

(n) Penes Re-
perit: such (thirdly and chiefly) as that in the (n) will
of one Sir William Septvans Knight, sometime owner
of Milton neer Canterbury, dated anno 1407: *Item*

kgo

Iugo Adam Stanerda, Thoma Hamonde, Roberto Stanerde, Roberto Chirope, & Johanni Richesforde seruis
& nativu meu, pro bona servisio mihi ab eisdem facta, Naivi.
plenam libertatem, & volo quod quilibet corundem habeat
cartam manumissionis sigillo meo signatam, in testimo-
nium bususmodi, mea ultima voluntatis. I might add,
that, what in confirmation of the probability of Spots
Story is added, viz. that hereupon the King so sto-
mached the Archbishop, as to put him by his place and
office in his Coronation, hath no support or warrant
from any Story of those times, all which, with *Gerva-*
sius Dorobornensis, a Monk of his own Church, agree
in the yeilding and rendring other reasons hereof,
chiefly his being interdicted his Episcopal Function,
for invading the See of Canterbury, Robert the Arch-
bishop being yet alive, and undeprived, and holding it
and Winchester both together: which is the more
probable, because for the same reason four years be-
fore, *Wolstane* the elect of Worcester refused to be
consecrated Bishop by him, and was sacred by *Aldred*,
the Archbishop of York, as the Monks of Worcester
and Westminister have it in the year 1062. But to
keep to our Villenage, which apparently is traceable
in Kent sithence the Norman Conquest. Nor indeed
seeneth it to have been otherwise here (in this parti-
cular of Bond-men, or Villeins) in the times before the
Conquest, witness (besides the mention of such in
the (o) Saxon Laws of *Ethelbert*, *Losbaire*, and *Eadric*, (o) Ms. in
all Kentish Kings) an old Saxon tripartite deed or char-
ter purporting a contract of marriage, which, because
it may serve to exemplifie the manner of espousals in
those elder times, and is a great illustration to a model

or constitution of that nature exhibited of late by Sir Hen. Spelman, Concl. Tom. 1. pag. 425. and Mr. Whelock, in his late Edition of the Saxon Laws, pag. 50. I shall tender it to common perusal, from that part of it left and laid up at Christchurch, transcribing it in the Appendix, Scriptur. 17. Before I proceed, having made mention of that constitution, touching the manner and rights of espousals, let me (so fairly occasioned, with excuse for the digression) help to rectify the edition with some animadversions, which to me it seemeth much to want, in the Saxon especially. First then I conceive, the first word of the second chapter in the Saxon copy, *viz.* (þ) as belonging to the precedent chapter or article, ought to be taken thence, and placed as the very last word of that precedent article, and so we are to read it, *I abong an his fhmð þ,* i. according to the Latine copy, & plegiens (rather, *sive iubens*) *hoc amic⁹ fui.* In the next, or second article, I conceive the two last words there, *Eon ryððan,* belong to the next, the third article, which consequently is to begin there. As imperfect is that article in the end as in the beginning, wanting to perfect it, the whole first line of the next (the fourth) article, *viz.* *gif heo lang ryððome he;* all which, I say, belong to the precedent article, the fourth being to begin at *gif hit ryða gefond-brð,* which I conceive not well turned (as in the new Version there) by *si quidem evenias,* being rather, under favour, thus to be rendred: *si sic convenias,* and thus indeed runs the old version in the precedent page; and so (to passe by some intervening literal mistakes) is that in the close of the sixth article, *I ho to ðam bonge se ðe geþebet salend ryð,* by *satisfaktionem-*

que accipiant de celebrandis nuptiis. The old version here is: *Et excipiatur inde plegium qui jus habet in radio.* I once pitched upon this version: *Satisfactionemque inde accipiunt qui sponsalia ordinaverint,* i. e. *Paranymphi.* But leaving that, to return to our purpose. By what is premised, I conceive we have ground enough to conclude against what Spot singularly delivers touching the Conquerour and Kentish mens meeting, with the manner, product, and result of it; and consequently, what is built upon it, our counties reteining her *Gavelkynd*-customes and priviledges by means thereof.

But after this pulling down with one hand, to help build up another while with t'other, and not to leave the cause of our enjoyment of those Liberties (that especially of Partition, the more eminent property in *Gavelkynd*) thus uncertain, let us enquire into the carriage of affairs of this nature about the times of the Conquest, when they say we obtained to preserve and continue this (amongst the rest) by composition with the Conquerour, whilst the rest of the Kingdom was deprived of it. I say deprived, because as (*p*) *Privatio* (*p*) L. decem presupponit habitum, so those who are of this opinion in si. de stipul. take it for granted, that before the Conquest, by virtue of a national custome first induced by the Saxons, & jur. ^{l. manus illatio-} ^{n. de justit.} and by them traduced from the Germans, intended by *Tacitus* in his *Heredes successoresque sui cuique liberi*, &c. and afterwards incorporated into our Laws by (*q*) King *Cannus*, inheritances descended and were partible after the nature and manner of our *Gavelkynd*, ^{(q) LL. Cannus,} par. 2. cap. 48, at this day. So of late (amongst others) Sir Hen. Spel. & 75. man, in his Glossary, verb. *Gavelatum*; Daniel in his History, fol. 38. *Verstegan* in his Antiquities pag. 57.

Archbishop Parker in his *Antiquitates Britannicae*, pag. 108. and Mr. Lambard, in his Glossary, verb. *Terra ex scripto*, though afterwards in his Perambulation, pag. 545. he is found to cross himself herein, by saying that this custom was brought hither out of Normandy by *Odo* the Conqueror's brother. Now 'tis true, and not to be denied, that by these Laws of *Canum* inheritances were partible; but how? It may be equally, (like our *Gavelkynd*) but it is not so expressed, nor do the words enforce it. It's ordered there indeed, that a partition of the estate be made, in the one, between or among the wife, children, and next of kin, by the Lord, in the other, by the heirs among themselves; in both, not *pro parte* emne, or *pro parte* egen, i. e. equally, but *pro parte* pahre; in the former more explicitly thus: *aleum be hæp mæhæ, &c.* i. e. (according to the old version in Brampton) *unicuique secundum modum qui ad eum pertinet*. Here is now no equal division spoken of, no equalling the younger with the elder brethren, or the like. But the estate is to be shifted *pro parte*, i. e. according to right, justly, or if you will (after the old version of the latter Law in Brampton, being the same verbatim with that in Mr. Lambard (r) elsewhere) *rectè*, every one to have his due, haply after a Geometrical, not Arithmetical proportion. Again, not by equal proportion, in point of goods at least, for each was to partake therof, (as in the *Gavelkynd* partition (f) in Ireland, each one a part according to their quality, degree, or desert) *pro rata*, happily their *reasonable part*, whence indeed some do fetch and ground a wit we have among us, called *Rationabili parte bonorum* (concerning which there is a question in our books, whether it lie by

(r) *Archaison*,
vol. 136. a.

(f) *Davies*
Reports, Le
Irish custome
de Gavelkind,
vol. 49.

by the common Law, or by the custome onely of some

(*s*) Countries, and whose footsteps may be traced in
venerable Bedes English Saxon Ecclesiastical History,
 lib. 5. cap. 13.) but of this matter more anon, at the
 close or foot of this Proposition. Or again, *riþe nihtē*,
 i. e. *juxta arbitrium boni viri*, as the Civilians in like
 case use to speak, or *pro arbitrio Domini*, as it is in the
 former of those Laws, *be his vihtē*, i. e. *judicio suo*,
 whose place, by provision of succeeding times, both
 here and in Scotland, was supplied by the (*u*) Ordin-
 ary, first joynlyt with the deceaseds friends, after-
 wards without them and alone, as haply more to be
 confidid in, because by common intendment, as more
 knowing, so more careful to deal uprightly; though it
 be utterly unknown or uncertain when this trust began
 by written Law to be committed to the Ordinary; if
 I may guesse, about what time that provision was made
 for the like in (*x*) Normandy, whereof in *Matth. Paris* (*x*) *Cultum*
History, anno 1190. pag. 161. edit. ult. Or else (to
 proceed) *riþe nihtē*, according to right, i. e. Custome,
 or right, as it is ordered and directed or tempered by
 the usages of several places, for (*y*) *Qualibet provin-* (*y*) 27. *Di-*
vicia abundat suo sensu. Apposite and pertinent to
 this purpose is that observation of a late compendious
 (*z*) *Historian* of our own, upon occasion of the Con- (*z*) *Danielian*
 fessours collection and compilement of, as it were, a
Codex Legum, (whither we may refer the original of
Magna Charta) a Standard-law to be currant over all
 the Kingdome: Before these Collections (saith he) of
 the Confessours, there was no universal law of the King-
 dome, but every several Province held their several Cu-
 stomes, all the Inhabitants from Humber to Scotland used
 the:

(*e*) See *Comp-*
ellis Interp.

Raiena-

rum, & Swin-

burne of Te-

stan. par. 3.

cap. 16, & 18.

(*u*) *Bretton*,

fol. 60 b. Silt.

Tit. of Hon.

cap. 5. sect. 21.

p. 724 Stat.

will. Reg.

Scotor. 1.

cap. 22, & 30.

(*x*) *Cultum*
Normann.

cap. 10, 21.

(*y*) 27. *Di-*

stinct. Ultimam.

wil. 1.

the Danique Law, Mercianland, the middle part of the Country, and the state of the West Saxons had their several Constitutions, as being several Dominions, and though for some few years there seemed to be a reduction of the Heptarchy into a Monarchy, yet held it not so long together (as we may see in the succession of a broken government) as to settle one form of order currant over all, but that every Province, according to their particular Founders, had their Customes apart, and held nothing in common, (besides Religion, and the Constitutions thereof) but with the universality of *Meum & tuum*, ordered according to the rights of Nations, and that *Jus innatum*, the common Law of all the world, which we see to be as universal as are the cohabitations and societies of men, and serves the turn to hold them together in all Countries, howsoever they may differ in their forms. So that though we shall admit these with the rest of *Cnutes* laws to be national, as by their Preface (that, I mean, of the second part, conteining his secular or politike Constitutions) they are apparently no other, (*Dis iij. Conn ge
populcunde gepebnej de ic pille mid minan pitenan
pæde. Þ man heals open eall Englaland:*) yet I take it these Laws (68. and 75.) conclude not for a national, general, or universal descent of Inheritances, by an equal or Arithmetical division amongst all the children or heirs, nor indeed for more than this, that a partition was to be made of the same, in point of proportion, more or lesse, according to what, *pro more patria vel loci*, and (in point of goods) *juxta arbitrium Domini*, was just and fit, there being no precedent general Law, or Canon here (now extant at least) to regulate, or give directions in case.

But

But if not nationally, (for, to give one instance instead of many, *Thoroldus*, in a Charter of his to Croyland Abbey, recorded by (^a) *Ingulphus*, makes mention of his Lord and kinsman, Earl *Algar*, the eldest son and heir of *Leofric*, Earl of Leicester, and his Countesse *Godiva*, *Thoroldus* sister, in the year 1051.) yet I am contented to admit and agree, that provincially, and particularly here in Kent, we had such a Custome both before and at the Conquest: neither am I against their opinion, who affirm the like course and custome currant in those times throughout the Kingdome, as not being desirous to insist much upon this example in *Thoroldus* charter, or any such like, to the contrary, for the present, though I doubt whether it canconcludently be argued from (the grounds and authorities they seem to go upon) those Laws of *Cannus*. Nevertheless be it so: for though some will say, the Conquerour found it not here, but either by himself, or his brother *Odo*, brought it hither out of Normandy, and by the pattern and practice of his own Countrey planted it here, (how can this stand with *Spots Story* by the way?) yet I am not of their mind. For had it been from thence transplanted hither, probably it would not have been confin'd to Kent, a corner onely of the Kingdome; but have spread it self rather over the whole, by the Conquerours means, whose inclination and endeavours to propagate and implant here the Customes of his own Countrey, are too eminent and notorious to be doubted of. 'Tis nothing probable then, (what some have deemed) that we borrowed this custom from Normandy, or that *Odo* was wrought upon by any pattern of that Countrey to set it up

M

amongst

^(a) Hist.
Croyl. fo.
519.2.

amongst us, but rather found it here at his coming. Supposing therefore such an universal custome here in England before and at the Conquest, it will concern us next to make enquiry, how it came to passe, that when all the Realme beside, hath in a manner discontinued it, Kent onely receins it. In that general manner at least, whereby in processse of time it is be-

(a) *Perambul.* come (as the Year-book quoted of (b) Mr. *Lambard*
pag. 538. phraseth it) as it were a common Law there. The answer must be but conjectural, since Records herein fail us of all light, as well as Histories, all but *Spots*, who for the reasons pre-alleged shall be none of my Resolver. Will you have the common answer? Why then they say the Conquerour abrogated this custome in all parts of the Kingdome save onely in Kent, which obtained to continue it by composition with him when they met at Swanescomb. But having formerly said (I hope) enough in answer hereunto, I will seek further, and try if some other more probable cause may not be found for it.

The Conquerour then (I will suppose) consented to the continuance of this custome generally throughout the Kingdome, in all, I mean, but Knight-service land, the descent whereof to the eldest son alone, (partly for his own, and the Realms better (c) defence and strengthening, and partly for the upholding and maintenance of (d) gentile families) I suppose none doubtes to be lesse ancient than the Conquest, for so much of it (at least) as is of ancient Tenure, (as Mr.

(c) *Coke upon Littleton*, fol.

24. 2.

(d) *Hodie nobiliter subinde allodiales fratris inter liberos obnoxiae, in feuda redigere solet; scil. ut primogenito consulat, & potencia nervis in unum glomeratis, sans familia splendor multitudine liberorum in posteritate non gravetur.* Nic. Burgund. de Consurgit. Flandrie, Tract. 7. pum. 7.

Lambard

Lambard desires to qualify it;) Nay, and seems to give expreſſe allowance to it, without distinction of lands, by that 36th of those Laws in *Ingulphus* copy, which after the Conquest, he granted to the people of England, and were indeed (as the title of them intimates) the Laws of the Confessor, his predecessor; or rather, say (e) ſome, of the Confessours predecessor, *Canutus*: *Si quis intestatus obterit, liberte ejus hereditatem equaliter dividant.* So runs the Law according to (f) Mr. Seldens version from the original French or Norman. Some haply may take this as intended onely as a rule for goods, not for lands too. But to that it may be replied, that the word (*hereditatem*) there (if of that acception then, as ſince and at this day) will not admit of that conſtruction; ſince, by the common opinion both of elder and more (g) modern Lawyers, nothing paſſeth with us here in England, ^{(e) Camb. Britan. Seld. Pol. lyolb. and Spelm. Coun-cils.} ^{(f) Notes on Eadmer. p. 184.} ^{(g) Cowell In-terpr. verb. Heir, and He-reditament. As also Instit. lib. 2. tit. 14. pag. 166.}

Feodum idem est quod hereditas, answering to that of (b) Bracton, long before him: *Feodum est id quod quod tenet ex quaunque causa sibi & heredibus suis.* See to this purpose *Glanvill*, lib. 13. cap. 27.

But here we meet with an objection. By this argument (will ſome ſay) you restrain and tie up the Conſtitution to lands onely, excluding goods, or chattels, as our Lawyers call them, from what ground, ſee in Sir Hen. Spelman's Glossary, verb. *Capitale*, to which add *Freberus* his Notes upon the Decalogue, published anno 1610. Precept the laſt. To conſtrue it, (I

Objection.

Solution.

must confess) or of either singly, or alone, were, in my judgement, too much to restrain and streighten it, and in effect to conclude it a lame and imperfect Constitution, ordering the intestate dead mans estate, and the disposal thereof, but to halves, as we say ; wherefore I conceive, that to take the word (*Inheritance*) here to comprehend both, (as I suppose ~~the~~ doth in that 68. of *Canutus* Laws, whereto this here, if it were not taken thence, may seem to have some reference, is not more reasonable, than to understand it either of chattels, or lands singly, seems to me otherwise.

Objection.
Solution.

(i) See *Gesta
Gauis*, *Ducis*,

&c. p.200.b.

(k) *Lib. Feu-
dor.* 1. tit. 8.

parag. 1. & ibi
Hatomannus.

(l) *Verbo
Fragmenti*

Saxon. in

Text. Roffens.

(m) *LL. Alure-
di*, cap. 47.

apud *Jorna-
tens.* *LL. Ca-
nus.* cap. 104.

ibid. *LL. Edo.*

in *Lamb.* fol.
136. a.

(n) *LL. Ebel-
redi*, cap. 2. in

Jornal.

(o) *Judic. Ci-
vit.* *Lond.* *ibid.*

cap. 1. *LL.*

Canuti, c. 32.

ibid. & *Glos-
tar. ad calcem*

LL. Hen. 1.

verbo Bocland.

Why but then (say they) you admit of a power of devising Inheritance by will, and consequently make Fee and Free-hold deviseable, and that by Law, arguing from those words : *Si quis intestatus ob. erit*, &c. True ; distinguishing times : for (I take it) nothing was more usual in those (i) times, (I mean before the Norman Conquest, and this, if you mark it, is originally a Law of the Confessours, or rather of *Canutus*, his predecessor) than to devise and give lands away by will, though therein they receded from (their first copy) the German custome, of *Nullum testamentum*, a provision afterwards received into the body of the Feudal Law, which thus hath it : (k) *Nulla ordinatione defuncti in feudo manente vel valente.* It was then, I say, a usual thing, with their Lords consent at least, to dispose of their land by will, especially their *Bocland*, whence haply, amongst other titles given it (as being sometimes termed and turned (l) *Alodium*, otherwhile (m) *terra hereditaria*, often (n) *terra libera*) not selome called (o) *terra testamentalis*, that is (as an old Leiger-book in Guildhall London expounds it) *terra*

quam homo potuit in lecto suo languens legare: with this limitation notwithstanding, that such *Boeland* were not by precaution in the original gift or grant, liable to that or the like restriction, in point of alienation, occurring in the 37th of King *Alfred's* laws, which nevertheless extended but to strangers, a man being there forbidden to alienate his land of that nature of his *m̄rge boih*, i. e. *extra cognationem vel progeniem*, or, in the Civil law phrase, *extra familiam*, from his own kinred or family, whence perchance it came afterwards to passe, that in such *terra gentilitia*, the heirs concurrence was required and used in the alienation. Instances of this kind (of disposing land by will, I mean) might be given in abundance, but a few may serve the turn. To passe over, as obvious, because publike, King *Alfred's* will, at the end of his acts and life by *Afferius*, though I might here perhaps not impertinently take up that of *Regis ad exemplum*, &c. to let that passe, I say, as also for the like reason, to omit *Byrhricks* will of Mepham in Kent, extant in the *Pembulation*, pag 492. whereunto (if need were) I could add many more examples, as well out of St. Albans private History, now of late made publike by my deceased friend Dr. *Watts*, as from the Records of the Church of Canterbury, whereof, besides the copies of some whole wills, I have by me several extracts: To let all these passe, I say, I shall onely instance in a will or two, one of a very eminent personage, an *Etheling*, (p) Prince *Ethelstan* by name, the son of King *Ethelred*, which I shall set before you in the Appendix, Scriptura 18, as Scriptura 22, the other; with some imperfections and misprisions here and there, I confess, I confess, but

(p) Of whom
see Speed, Hist.
in the life of
Ethelred the 3d.
Monarch.

but through the Transcribers fault that entered them in the Leiger, and by reason of his ignorance (it should seem) of the Saxon tongue and character, which I dare not undertake to rectifie. Thus for practice. As for law : besides that power in all men in those times to devise land in general, by their wills, without any violence deduced and concluded from that 68 of *Cannus* laws, providing how a mans whole estate (the Lords Heriot onely excepted) shall be disposed of, in case he die intestate, we have a more expresse law for it afterwards, the 76th I mean, for such land at least as is there termed land *gepeped be scyne gepitnesse*, i. e. (as Mr. *Lambard* construes it) *terra omni lite soluta*, or (as it is turned in *Fornalensis*, and the 35th of the Confessours laws de *Heretochius* in Mr. *Lambard*, fol. 136.a.) *terra acquietata comitatus testimonio*. Let me illustrate it by a passage in a Charter (q) of King *Edmund* to

(q) In Armari Eccles. Cant. *Aelfhere* his Thane in the year 941. of certain lands and possessions there called *Mulanton*, running thus: *Prout pater ipsius Aelfheri priorum temporibus nostrorum, sub contestamine totius popularis Senatus, sua pecunia, ab illo & ab alio, prout sive temporis mos erat, adquisivit.* In effect it was, as I conceive, if not the same with *Eoeland*, (called *terra testamentalis*, not onely because deviseable, but also in regard of the publike testimony of the Shire, required and used in the passing of it otherwise than by will) such land (like that mentioned of Mr. *Selden*, Tit. of Hon. par. 2. cap. 5. pag. 631. and there said to be holden, *quidem & absque omni calumnia*; or like that passed or conveyed, as in Sir *Henry Spelmans* Councils, pag. 319. and 333.) as was unquestion bly a mans own, as upon the purchase or grant

grant of it confirmed and assured to him in the legal way of those times, such haply (like those of latter times passed by Fine) the conveyance whereof was recorded and introlled, or entred in the Shire-book, in publike Shire-mote after proclamation there made, for any to come in that could lay challenge, or pretend right unto it; whence not improbably our manner of recording conveyances, sometimes (as in Canterbury) in the Hundred, sometime in the Burgemote, otherwhile in both, whereof I am not unfurnished of instances. Thus for that kind of land. Now for *Boc-land*, and how the Law stood there: (r) Sir *Henry Spelman*, I confess, is cleer of opinion against all power of alienation in the owner, and that of necessity it must be left to descend to the heir, and thence is called *terra hereditaria*, grounding upon that 37th of King *Alfred's* laws, which he there recites. Under favour, that Law clearly makes for the contrary, allowing unto the Possessor a power of alienation, saving where his hands are tied from it by an express provision and prohibition to the contrary, from those (the Ancestour, or who else) it came unto him from; a caution in my apprehension of the same nature with an exception, which (as (f) Civilians use to say) *firma regulam* (f) gl. Ex his in non exceptis. And as for its name of *terra hereditaria*, and the argument upon it, it is easily answered, as thus: so called it was to distinguish it from *Fol-land*, otherwise called *Gafol-land*, wherein the Tenant being but as it were a Lessee, *Utufructuary*, or *Fermour*, and Author. de non having no propriety, upon his death, or other expiration of his term it reverted to the Lord, and descended not upon the heir, as *Boc-land* did, at least ought.

Vid. *Brafferton*,
lib. 2. cap. 16.
num. 12. fol. 38.a.

(r) *Glossar.*
verbo *Boc-land*.

in addit. in
parag. item
placet. Instir.
de donatio. &
parag. ut au-
tem lex. in
Auth. de non
alien.

ought to do, being (because his own in property) hereditary, if not alienated by him in his life time, as it might be, in regard it was as well *terra libera*, as *hereditaria*, and so called, which *Folcland* never

(¹) *Glossar.*
verb. *Folcland*,
& verb. *Alldium*.

was, however Sir *Henry Spelman*, in a place (²) so asserting, likening it to *Alldium*, which indeed was *liberum*, and consequently capable of alienation, either by gift or sale, to whomsoever the owner pleased; a property appropriate to *Bocland*, thence otherwise called, especially abroad, *Alldium*, whereof more hereafter. But further to clear the point of *Boclans* being alienable, and in the power of the owner to dispose of at pleasure, have here a pregnant passage for

(³) In Archiv. Eccles. Cant.

our present purpose, borrowed from a Charter (⁴) of Archbishop *Wifred* (who died about the yeer 830.) of the gift of certain houses to his Successours in the See of Canterbury, thus speaking: *Eis Donne huelc mon*

þet uondcrysde ȝat ne me fiae min pic þon alefðpan

(⁵) *Quere:*
for the writing
is not clear.

(x) ȝon oþrum higum to bpucenne ne minus aepfepaþum. *Donne pit;* he *þet hit naeſ ne fne epistre cipican*

land ne nenges monney boclond aep min. *I Donne je*
monne ieond ȝence I ajmeate be oððerra monna boclond
um ie in spikstolum ie butan. huæſt hio megen hiopa
ag̃en yellan oððe on hiopa lif gan jue him leof fiae oððe
fop huðu min scytle beon un ie . . . I denpe ȝon oððum
monnum hiopa. That is, in our modern English:

If any man shall say that this Mansion is not more in my power,
or (the power of) my heirs to use, than of the rest of the
Society, (or Covent) then let him know, that it never
was Christ-church land, nor any mans Bocland before it
was mine: and then let him further think and consider
by other mens Bocland, as well in privileged places, as
without, whether they may grant away their own (land,

or

or possessions) or give it for (or, in) their lives times as pleaseth them, or wherefore mine should be of different kind to those of other men. Thus the Charter, as I understand it. *Boeland* then, I conceive, we may conclude alienable by the owner of it, both by act or grant in his life time, and at his death by will, in the times (I mean) before the Conquest. But afterwards that custome of devising it by will ceased, as did withall the descent of land generally, by equal division amongst all the sons. For, as the English Laws and Customes in general, from that time suffered a daily eclipse and declination by degrees, so this in particular (saving where they were more tenacious of it than elsewhere, and in such places, whereof (y) London seemeth to be one, as by special priviledge were suffered to keep it up) languished, and was at length supplanted by that other kind of descent, which now regularly takes place throughout the most part of the Kingdome. In somuch as where this partible descent cannot, to uphold it self, justly plead antiquity and ancient custome, it quite fails, and falls to the ground. And to this passe (I take it) was it come in *Glanvill* and *Bractons* dayes, who therefore harmoniously deliver this as a requisite and essential property in land of such descent, that it be not onely by nature partible (as it is by being *Socage*, if we may interpret *Bractons* *si hereditas paribilis sit, by Glanvills si fuerit Socagium*:) but withall, that by custome and of old it hath actually been parted. Now the Kentish men, it seems, the Commons there, I mean, like the Londoners, more careful in those dayes how to maintain their issue for the present, than their houses for the future, (a contrary respect to theirs

(y) See Stowes Survey, p. 535.

who have of late, by A&C of Parliament, rid their lands of this Custome, as to that property of Partition) were more tenacious, tender and retentive of the present Custome, and more careful to continue it, than generally those of most other Shires were: not because (as some (z) give the reason) the younger be as good Gentlemen as the elder brethren, &c. (an argument proper perchance for the partible land in Wales) but because it was land, which by the nature of it, appertained not to the Gentry, but to the Yeomanry, whose name or house they cared not so much to uphold, by keeping the Inheritance to the elder brother. And thus at length, though 'tis like enough from small beginnings, (as many times great streams have but narrow fountains) it became so spred and diffused over all the County, that what was not Knight-service, but Socage-land, or of Socage Tenure, was in time (in Mr. Lambards phrase) apparrelled with the name, and (as may be added) qualified with the properties of *Gavelkynd*. And hence also it comes to passe, both that we very rarely, or never meet with any land there at this day, (other than Knight-service land) that is not of *Gavelkynd* nature, and of a partible descent, and that withall both our printed and manuscript Custumals, whether general or particular, use never a word of Socage Tenure, but of *Gavelkynders*, Tenants in *Gavelkynd*, Tenements of *Gavelkynd*, and such like, as Mr. Lambard observeth, pag. 544. And notwithstanding the ancient printed Custumal in *Totstell* claimeth freedome onely to the bodies of the *Gavelkynders*, which may be the truer reading, yet Mr. Lambards may, especially at this day, passe well enough, by whose copy it is.

(x) Lamb.
Peramb. pag.
546. from Lit-
tleson.

is claimed as due to all the Kentish men in general, as, for the generality of the Commons, by common intendment, such at this day. But of these things hitherto. Yet ere I proceed to the next Proposition, let me discharge my self of a late promise for inquiry into the following Emergent:

Whether the Writ, De Rationabili parte bonorum, lie at the Common Law, or by Custom.

See the Pre-
face to the
Reader.

THIS Writ is grounded and dependeth on a tripartite division of a mans personal estate, whether dying testate or intestate, and leaving behind him wife and children; as in case he leave onely a wife, and no children, or children onely and no wife, upon a bipartite. In the former of which cases, one third part of the goods belongeth to the widow, another to the children, and the third (called the Deaths-part) to the use of the Defunct, to be disposed either by himself, as he shall see good by his will, or for him, if he die intestate, by the Ordinary *in pios usus*. In the latter case, one moyety falleth to the widow, or to the children, (as the case shall be) and the other to the use of the dead, as before. In both cases, to the children of the deceased, each of them a rateable part, provided that such child be not his fathers heir, or were not otherwise advanced by him in his life time, unless haply (for hereof there is some question) waving that his former portion, he shall choose rather (as in the case of lands) to take the benefit of this partition by the way of *Hotchpot*, which is all one with the Civilians *Collatio bonorum*, or the Lombards *Missio in confusum*.

See Dr. Cowell, and Sir Henry Spelman, in *Hotebpor.*

Now that there was any certain, or definite part or portion of the deceaseds goods or estate, (whether real or personal) any *Quota pars*, or *Legitima*, as the Civilians term it, by any custome here nationally obserued, due to the widow or children in the Saxon times, doth not (that I can find) appear by any Law or other monument of theirs now extant. The plainest and most visible footsteps of that tripartite division or partition by this Writ intended, appear in that remarkable place of venerable *Bedes Ecclesiastical History*, lib. 5. cap. 13. where we read of ones who, Testator-like, disposing of his substance or estate, *Omnem, quoniam possederat substantiam, in tres divisit portiones. E quibus unam conjugl. alteram filiis tradidit, tertiam sibi ipsi retentans, statim pauperibus distribuit.* The Saxon reading hath it more for our purpose thus: "Ealle hit "xhto on dpeo to salve. xme eal he his pipe gealde. "opegne his beapnum. Tone dpidan be him gelamp. "he mycapse beapnum getaide." Where mark, the third part is there said to belong to himself: "Some dpidan be him gelamp, &c. plainly insinuating that the other two as rightly apperteined to his wife and children, each of them a third. But withall obserue, that this is the act of an house-keeper in the Province or Region (as there called) of Northumberland: *Patrifamilias in regione Northumbriorum, &c.* So is he described; and such a testimony indeed it is as makes much (I confess) for the antiquity of that Custome (of a tripartite division) yet surviving and currant in those Northern quarters of the Kingdome, but whether, in right construction, extensive any further, or concluding

concluding for a national custome in that particular, especially since traceable in few other parts or counties of the Realme, by any later or elder footsteps, I think may well be doubted. To proceed then, (for I intend to state and handle the point rather as an Historian, relating the matter of fact, than as a Disputant, arguing the case:) as for that Law or constitution of (a) King Edmund, which some insist upon for the widows right to a moyety of the estate, if she have no issue, otherwise, in case of issue, and remaining sole, to the whole, that clearly takes place onely *vigore contractus*, or by force of a precedent contract; the Law in that particular being ushered in with this ground, or supposition: *gip hit i pa gepon pois br̄ð, &c.* i. e. if it shall be so mutually agreed or covenanted (before or upon the marriage.) Not doth that Law of King *Canutus*, par. 2. cap. 8. conclude for more than this, namely, a partition of the estate amongst the wife, children, and highest kinred, to be made *iudicio Domini*, by the Lord (of the Soils) discretion, "*gip he rihte, i. e. rightly, or according to right;*" and "*to he w̄t may be him to gebynige, i. e. after the measure, rate, or proportion that to them belongeth,*" not determining or making any mention, what that right, that measure, or proportion is in certain, (not the widow and children each of them a third, for then where were the kindfolkes share?) but leaving it indefinite and undetermined, as what haply being ordered by the Lord's discretion, and that swayed and regulated by (that *optimus legum interpres*) Custom, might vary with the place. Nor was any such partition currant here, in case there were a wife, for what saith the Law? "*gip ha cyde-*

(a) Vid. *Spl. Max. Concil. tom. 1. p. 415.*

"leage of *liberum* life *genite*, &c. i.e. If any one depart this life intestate, &c. implying *liberam* *testandi* *facultatem*, a free liberty to dispose otherwise by will: as doth also that Law of his Successour, the (b) Confessour, ratified and re-inforced by his Successour, the Conquerour, providing that the children of persons intestate shall equally divide the heritage. In which respect, and because by taking no notice of the widow, (as neither doth that other Law of *Canutus*, par. 2. cap. 75,) it tacitely leemeth to exclude her, I know not well what (thuch pertinent to the point in hand) can be concluded from that Law. And as not from this, so neither, I conceive, from that Law of King Hen. I. cap. 1. because it concerns and speaks onely of the Kings own Barons and Tenants: [*Si quis Baronum vel hominum meorum infirmabitur, sicut ipse dabis vel dare* (c) *disponet pecuniam suam ita datam esse concedo, quod si ipse preventus vel armis vel infirmitate pecuniam non dederit nec dare disposuerit, uxor sua, five liberi, aut parentes, aut legitime homines eius eam pro anima eius dividant sicut ei melius uisum fuerit*] And is seemingly no national provision, no rule intended for the generality of the Subjects, the Community: or if it were, yet with such expresse full and free liberty (inconsistent with this Writ) given by it to the party to dispose of his estate by will at his pleasure, as tacitely was granted both by that fore-cited 68. Law of King *Canutus*, and that other of his Successour the Confessour, whereof also before. So that admitting, or supposing a will, the subsequent division or distribution (prescribed by that Law of Hen. I.) took no place, as by consequence neither did that reasonable or lawable

(b) *Si quis intestatus obierit, liberum ejus ha- reditatem a- qualiter di- vi- dant.* Vid. Cl. Selden's Not. ad Eadmer.

pag. 184. c. 36.

(c) al. iussori.

part

part intended by this Writ. Passing therefore hence let us next (as next in order of time) consult (that Oracle of the Law) Judge Glanvill, living and writing in Hen. 2. dayes. He indeed, lib. 7. cap. 5. is expresse for, this kind of tripartite division: *Cum quis (laicis hec) in infirmitate possimus testamentum facere voluerit, si debitis non sis involvitus, tunc omnes res ejus mobiles in tres partes dividensur aequaliter.* *Quarum una debetur heredi, secunda uxori, tertia vero ipsi reservatur: de qua tertia liberam habet disponendi facultatem: verum si sine uxore decesserit, medietas ipsi reservatur.* And to the same purpose again, cod.lib. cap.8. *Si post debitorum acquisitionem aliquid residuum fuerit, tunc id quidem in tres partes dividetur modo prædicto (he refers to the forecited fifth chapter)* Et de tertia parte suum ut dictum est facias testamentum. To which kind of tripartite division, he plainly seemeth to refer, and have respect afterwards, lib. 12. cap. 20. where he lays it down in terminis, as a thing recepti juris, warranted by the Custome of the Realme, that is the Common Law, saying: *De catalinis autem (these are the words of the Writ) qua fuerunt prefatis R. præcipio quod ea omnia simul & in pace esse facias, ita quod inde nil amoveatur nec ad divisam suam faciendam, nec ad aliam rem faciendam, donec debita sua ex integro (d) reddatur. Et de (d) 1. reddendo post fiat rationabilis divisa secundum consuetudinem terra mea.* Thus Glanvill, with whom unanimously concurt (e) Bracton and Fleta. Hence now (e) Vid. Bract. & Flet. p. 125. many learned men conclude this tripartite division, and the Writ waiting thereupon, to be rather by orat the Common Law, than (as is thought by others, and by learned men also) by Custome, and that hereof

Magna.

Magna Charta, cap. 18. expressly taketh notice, in the Savis, or Limitation at the end, thus Englished: *Saving to his wife and children their reasonable parts.* The Opponents, and such as take the contrary part, endeavour to elude this as a matter rather of Counsel than command. So(for example) Dr. *Cornell*, Instit. li. 2. tit. 13. parag. 2. followed by Sir *Edw. Coke*, in the second part of his Institutes, pag. 33. who to affert his opinion in the negative, (his denial of the widow and childrens right to a Reasonable Part by the Common Law) thus there adds: *The nature of a saving regularly is, so save a former right, and not to give, or create a new; and therefore, where such a Custome is, that the Wife and Children shall have the Writ, De rationabili parte bonorum, this*

(f) Of Testaments, par. 3. Statute swewth is. And this Writ doth not lie without a parag. 16. fol. 1. a particular Custome, for the Writ in the Register is grounded upon a Custome, which (as hath been said) is saved by this Act. But where going on he further adds, that Bracton was of the same opinion, quoting for it, (as (f) Swinbourne before him) that place of Bracton, fol. 61. 3. [*Neque uxorem, neque liberos amplius capere de bonis defuncti patris vel viri mobilibus, quam fueris eis specialiter relictum, nisi hoc sit de speciali gratia testatoris, ut pose si bene meriti in ejus vita fuerint, &c.*] with submission, they are both of them mistaken: that rour (it seems) which Bracton there delivers, being a plain exception, occasioned by deviation and diversion from the general rule by him that marginal quotation, not (as by Fleiss after him, *totidem verbis*) just before laid Glanvills own, down, and taking place onely in Cities, Burrows and but his that set him forth, or some o- the like, by particular custome of the place, as (amongst others, *ut quidam dicunt*, say they) in London, and that upon this double consideration, namely, first, the advance-

advancement of trading and traffique (the life of all Common-wealths, especially of Islands) which would be much encouraged by this liberty left to the Merchant or Trades-man, to dispose of his labours and gettings, where and how he saw best; and secondly, the countenance of vertue, and discountenance of (her opposite) vice, when by a necessity laid upon the wife and children, to comply with the husband and father in such wayes, both of thrift and duty, as might win and wear his love, and consequently, make him willing to requite their merit, the vertuous should be rewarded, the vicious discarded: *Vix enim* (say they, Bracton and Fleta both) *inveniretur aliquis civis, qui in vita magnum questrum faceret, si in morte sua cogere-tur invitus bona sua relinquare paucis indoctis, & luxuri-osis, & uxoribus male meritis: & ideo necessarium est valde, quod illis in hac parte libera facultas tribuatur.* Per hoc enim tollit maleficium, animabit ad virtutem, & tam uxoribus quam liberis bene faciendi dabit occasionem, quod quidem non fieret, si se scirent indubitanter certam partem obtinere etiam sine testatoris voluntate. And this (I take it) is the thing (the good of the Commonwealth, by the maintenance of traffique, much encouraged by the liberty of a free Devile) by Glanvill, though somewhat darkly, pointed at, lib. i. cap. ii. where (acquainting us, that an Assise of Mortdancaster lies not for houses or tenements, [which are wont to passe inter catalla in Burrows, as Bracton and Fleta inform us] because of a greater commodity redounding to the Kingdome by another kind of Assise, an established course I suppose he means, warranting the liberty of a free Devile of such things, sanguinem catalla) he

faith: *Item ratiuncula burgagis cessare solet assisa per aliam assissam ex causa majori utilitatis in regno constitutam.* But notwithstanding it were thus in London in those times, (when *Bracton* and *Fleta* wrote) yet afterwards it seems that custome (of a free and arbitrary Devil) ceased, and (haply upon those counter-groundes; or contrary considerations, brought and laid down against it by the same *Swinbourne*, fol. 113.a.) gave place to this kind of tripartite division: witnesse (besides Mr. *Lambard*, *Perambul.* pag. 561.) what in a book lately published, intitled the *City-Law*, and said to be translated from an ancient French Manuscript, pag. 7. is delivered in these words: *And it is to be understood, that when a Citizen of the same City (London) hath a wife and children, and dies, all the goods and chattels of the said party deceased, after his debts be paid, shall be divided into three parts; whereof one shall remain to the dead, and shall be distributed for his souls benefit; and the other part shall be to his wife, and the third part to his children, to be equally shared between them; notwithstanding any will made to the contrary, &c.* But (to proceed) although *Glanvill*, *Bracton*, and *Fleta*, one and all, seem to conclude for this rule or order of Partition, to obtain and take place by the Common Law; yet, as this course did not long survive them, but, except where particular Custome (such as that whereon the Writs in the Register are grounded) kept it up, at length grew into disuse, in the case both of testate and intestate persons. (witnesse on the one hand, the liberty time out of mind generally used at pleasure to dispose of personal estate made by will; and on the other, the Ordinaries well-known power of distribution of Intestates

states goods, which is not without warrant from that clause at th' end of *Magna Charta's* 18th chap. whereof in *Matthew Paris*, and (g) elsewhere:) so with all these passages in *Glanvill*, *Bratton* and *Fleta*, are so inconsistent with what, in the case of testate persons, themselves with almost the same breath, deliver, that I know not how possibly to reconcile them. Whereof the former thus: *Possit enim quilibet homo liber majoribus debitis non involutus, de rebus suis in infirmitate suarationabilem divisam facere sub hac forma secundum cuiusdam patria consuetudinem, quod Dominum suum proximo de meliore & principaliore re quam habet recognoscatur, deinde Ecclesiam, postea vero alias personas pro voluntate sua.* Quicquid autem diversarum patriarcharum consuetudines super hoc teneant, secundum jura regni non tenetur quis in testamento suo alicui persona precepit nisi pro voluntate sua aliquid relinquere, libera enim dicitur esse cunctaque ultima voluntas, secundum has leges sicut & secundum alias leges. The other two, to one effect thus: *Civilibet autem sit licitum facere testamentum de rebus suis mobilibus & se moventibus, & quatenus superfuerit deducto ari alieno, scilicet debitibus aliorum, &c.* Thus, in mine opinion, do the same men mote than seem to fight with, and contradict themselves, and how to set them agreed is past my skill. But indeed *vix tanti est*, 'tis not much material, fince if we shall admit (what some eagerly contend for) this rule and order of partition to have sometime been by Law currant throughout the Realme, yet by general disusage and discontinuance, it is now, and that not lately, antiquated and vanished out of ure, both in this (of Kent) and other Counties, surviving onely (for ought I hear) in the
(g) Et si quis liber homo in restatus decesserit, per manus parentum propinquorum & amicorum suorum, & per visum Ecclesiae distribuantur, salvo unicuique debito que defunctus debuit: which in effect is the same with that of *Bratton*, and *Fleta*: ad Ecclesiam & amicos perinhibe execuicio.

Province of York, and some few Cities; and that it should ~~ever~~^a be revived, at least in the case of testate persons, until such some way may, if possibly, be found, how to dissolve this knot, and remove this rub of flat repugnancie and disagreement of those ancient Authours (the vouch'd Patrons for it) with them selves in the point; I for my part, having better judgement, see but little reason, and further than thus dare not in a case so controverted and canvased by learned and judicious Lawycers, interpose any judgement of my own.

PROPOSITION IV.

Whether Gavelkynd be a Tenure or a Custom.

 T will not be amisse (I hope) to usher in the answer to this *Quere*, with some digression concerning Tenures. Facing then about, and looking back upon the times before the Conquest, inquire we out the Tenures (if I may so call them) then in use, and what other succeeded in their places afterwards at and since the Conquest. Here I expect it should be granted (for 'tis avouched I am sure by several (b) men of credit) that before the Conquest we were not in this Kingdome acquainted with what since and to this day we call *Feoda*, *Foreiners Fenda*, i. e. *Fiefs*, or *Fees*, either in that general sense I mean wherein they are discoursed of and handled abroad in the Book thence intituled *De Fendis*, at home in that called

(b) See Mr. Selden's *Tides*, 2. Edit. pag. 228, 273 & 301. Illustrat. upon Polyolb. p. 108 Sir H. Spelman's *Glossary*, verb, *Fatuus*.

called *Littletons Tenures*, or in that particularly understood of us, when we treat or speak of Knights-Fee, which could not then be known here, when Knights themselves were not in being, as (saith a Record in the Cathedral of Canterbury, whereof more (i) anon) (i) And in the they were not till the Conquerours time Or if in effect Appendix, Scriptura 21. sence is no where to be found in any our Records or Monuments of those dayes now extant, and of credit, it my self and others have not beene more unhappy to miss it, than indiligent to seek it. 'Tis true, it occurs in the fifth and sixth of the Laws ascribed to the Confessor, set forth by Mr. *Lambard*, in the *Varia lectio* there in the margin; but besides that the Text in each place reads it *Fundo*, those Laws, I take it, for the most part, especially as to their phrase, carry not that antiquity; but, like those of like kind in Scotland, ascribed to King *Malcolm the (k) second*, and King *Alfred* (k) Vid. Spelman. will at the end of the Story of his life penned by *Acericis*, where the word several times occurs, favour Glossar. verb. Feudum, pag. 158. col. 2. & verb. Baro, pag. 81. col. 1. of a later dresse. The like no doubt may as truly be said of that, *Qui in feodo suo*, in the old Latine Version of King *Edgars* Laws, following those in the original Saxon set forth in the late Edition of the Councils by Sir *Henry Spelman*, pag. 446. And may we not upon this (amongst other grounds) question those Charters in (l) *Ingliphus*, thus far, I mean, as to doubt, whether many, if not the most of them, speak not another than that tongue in which they were originally penned, as being by the Author, (though English born, yet afterward Normaniz'd, by converting there some time,

time, as a Retainer and Secretary to Duke *William*, afterward Conquerour, and King of England) whose Story is penned in Latine, the better to suit with it, taught to speak the Latine of his time, and late Masters native Countrey: upon this ground, I say, that amongst many other phrases scattered here and there, not in use with the Saxons, nor ever heard of here in England till about *Ingulphus* own time, (such as *Averia*, *Ballivus*, *Bedellus*, *Communa pasta*, *Justiciarius*, *Forisfatura*, *Tenura*, *Weif*, *Stray*, with many more such like, which I forbear to name in this place) occurs *Feudum*. For example, in the Charter of *Wulfric*, the Mercian King, dated anno 833. we have it thus: & xl.
acras de eodem feodo in campo de Diping. The like in a Charter of *Bertric*, another Mercian King also, dated anno 860. and in some other of later date from succeeding Kings, we have ---- *de eodem feodale Gernshorpe*, and the like: whereas it may very justly be doubted, whether either the Laws, Stories, or other, either written or printed monuments of credit of any Nation or Countrey, can shew the word (*Feodium*, or *Feudum*) in use amongst them (but in stead thereof *Beneficium*, *Feudum's* elder brother, or the like) until about that age, until (I mean) after the beginning of the tenth Century from our Saviours incarnation. And hence give me leave, with *Buchelius*, in his Illustrations upon *Heda's* History of the Bishops of (m)Utrecht,

(m) Pag. 116.

(n) Pag. 111.

to suspec that list or memorial, (n) *De vasatis five fide addicis Ecclesia & Episcopo Trajellensi*, (as there it stands intituled) of *Heda* ascribed to *Adelboldus* the 19th Bishop of that See, who after he had late 18 years, died in the year 1028. as indeed a piece unadvisedly

sedly referred to that time and place, and in all probability belonging to some Successour of his. But be that as it will, I see nothing however that may render us unsatisfied of the truth of their assertion, who lay that the Conquerour brought, or introduced first into this Kingdome *Fendam*, *Feodum*, or (as in English) *Fee*, taken as it signifies Feudal services, especially military, (*predium militare*) the fence in which, as it regularly occurs in the (o) Feudal books abroad, so constantly in Domesday-book here at home, for distinguishing the land from other there said to be holden *per gablum*, *ad firmam*, in *Alodio*, and other like Tenures there occurring: the Introducer borrowing (laith one (p) of my Authours) the term, (he might have added the Customes) from his own native country, Normandy, which he concludes from a passage of himself there quoted out of Domesday-book, thus speaking: ----- *In eodem fendo de W. Comite Radulfo de Limes' 50. carucas. terra & sicut sit in Normannia:* thus subjoyning: *Feendum & Normaniam jangit, ac si rei nova noscere & Normannia disquirendae esset.* But with submission to better judgements, I question whether those words: *sicut sit in Normannia*, may not relate to (q) *Annentes Rege, omnes i Corruccatus, quas Angli Hidas vocant, fasciculis mensuris: Ordines Vital. His Ecclef. ad ann. 1089.*

(o) *Hotom. de Feud. lib. 2. pg. 309. p. rag. ult. tit. 51.*
(p) *Spelman, ubi supra.*

(q) *Annentes Rege, omnes i Corruccatus, quas Angli Hidas vocant, fasciculis mensuris: Ordines Vital. His Ecclef. ad ann. 1089.*
(r) *Bacons Elements, tract. 3. p. 30.*

Chap 1.
Sec. 3. p. 16.

Also, whatsoever the (1) Mirroir (a book whose antiquity is too much cried up of some) hath to the contrary, as if *in terminis* known here in England in King Alfrids dayes, by whom (as the Author there pretends) it was ordained that Knights Fee should descend and fall to the eldest, and Socage among all the sons; whereas in very deed we knew neither one nor other in those dayes, they with the rest since and at this day called *Fee-simple*, *Fee-taile*, *Fee-ferme*, *Frank-fee*, as also *Grand* and *Petite Serjeanty*, *Escuage*, *Burgage*, *Villenage*, and the rest, in the book of Tenures and elsewhere obvious, being all of the Norman plantation, and we by them, at least since their Conquest of us, brought acquainted with them, not knowing what Fee (in that notion) meant before, nor being to this day agreed among our selves, as neither are the Feudists and other writers on that argument in other parts, upon the etymologic and derivation, either of that or the word whereunto it is opposed, *Allodium*; wherein indeed Authors of several sorts, Lawyers I mean, Etymologists and Antiquaries so much differ and disagree, as that the further we wade in the research of their opinions in that kind, the more uncertain still we come off, and the further we are from (the end of our inquiry) satisfaction. However, I will on this occasion adventure to offer my sence, which, if well considered, may perhaps help to end the difference.

*Fundum deci-
did.*

Not to repeat that variety of other mens opinions in the point, of which some, and those the most, and with most general applause and acceptance, fetch the former (*Fundum*) from *Rides*; others from *Frida*, or *Frida (bellum)*; a third from *Fadus*; a fourth from the German

German Fueden, quasi a fungendo, i. pascendo, or (as
 (s) Gryphander hath it) from the Saxon Foden, i. c. nu. (t) De Weich-
 trire: to let these derivations all passe without any
 further repetition, as obvious enough in the writings
 of the Feudists and elsewhere, especially (with some
 additions of his own) in Martinus Lexicon Philolo-
 gicum: as likewise not to repeat the like variety a-
 mongst them, (as obvious as the other) concerning the
 latter, (*Allodium*) which some will have to be a deri- and *Allodium*.
 vative from *λ*, the privative particle, and *Laudum*, or
Laudatio, as a possession acknowledging no Authour,
 no Lord of the Soil, but God alone; others from that
 privative particle, and *Lodes*, quasi sine *Lode*, that is,
sine vassallo, as a mad man is called *amens*, to say, *sine
 mente*, as whose possessour is no Vassal, whilst a third
 sort fetch it from *Alstend*, as we should say, possessions
 common (i. e. such as may freely be given or sold) to
 all or any of the people, the many: like in this (say
 some) to what of old we here in England called *Folc-
 land*, by which (but how properly, since *Folcland* is
 parallel'd with what sithence we call (s) *Copy-hold*, (a) *Cornells*
 may well be doubted) they are found to illustrate it, *Interpreter, &
 well, Symbol* 1 b. 1. sec. 603.
 contrary to a fourth derivation of others, who hold it
 inseparable from the family, and thence of the Ger-
 mans called *Ein Antod*. A fifth sort there is, that draw
 it from the foresaid privative particle *λ*, and *Leod* (in
 French *Leud*) a Vassal, as it were, without vassallage, or
 without burthen, which we English men (saith my Au-
 thour rightly) at this day call *Leade*: not further, I say,
 to trouble the Reader with either any longer repetition
 of these and the like (for there are some other) various
 opinions of this kind, or any Catalogue of the several

Authors of them, I will, as I promised, offer my conjecture at each words etymologie, with submition of it to better judgements.

In short: then I say, that each of the two words in its original, which is German, is a compound consisting of two syllables, of which two, the latter (to begin with that) I conceive to be the same in both, and is no other than what is borrowed towards the composition of many several words of the same original, used and continued both in those, especially the Teutonic parts, and also here in this Island, from the time of the Saxons setting here, down unto this day, though with some little variation of the Dialect, occasioned by tract of time bringing its corruptions, and the intermixture of other languages: and that is with us *bade*, *head*, *bode*, with the Tentonics *bryd*, and *beis*, sometime *bas*, betokening in each place (as *dome*, and *ship*, anciently written *stip*, in the terminations of many of our words:) a quality, kind, condition, state, sort, nature, property, and the like. Hence the military, masculine, feminine, childish, paternal, maternal, fraternal, sisterly, desolate, presbyterial, neighbourly, quality, nature, kind, condition, &c. of a Knight, a Man, a Woman, a Child, a Father, a Mother, a Brother, a Sister, a Widow, a Priest, a Neighbour, &c. is termed *Knight-bode*, *Manbode*, *Womabode*, *Childbode*, *Fatherbode*, *Motherbode*, *Bretherbode*, *Sisterbode*, *Widowbode*, *Priestbode*, *Neighbourbode*, &c. The quality, nature, existence, of the Deity is styled *Gudbade* with us, with our Ancestours, the English Saxons (who wrote and had that *bade*, which we since write and have *bode* and *hood*) *Godbade*. Head in Maidenhead ows it self to the same original, denoting

ting out the virgin-condition, or maiden-quality of the party. *Hood* in *Livelyhood* is also sprung from the same root, whereby a mans state of subsistence is signified : and the like may be said of *bond*, in *Falshood*, *Likelyhood*, and a many words more of like termination, as expressing and setting forth in the one, the false, in the other, the probable, likely, condition of the thing predicated. This may also help us in the etymologie of what we use to call *Fees*, or *I eadly find*, our *Ancestours*, the Saxons *Fahs*, the Germans *Fbeide*, *Fetide*, and *Faide*, which in truth is but a compound of their *Fah*, i. c. *Hofstæd*, *Inimicis*, as we say at this day a *Foe*, and *bode*, *barr*, *bead*, *bey*, &c. i. *condicio*, *status*, *qualitas*, &c. together importing the condition of enmity in the person who bears it. I could here enlarge with instances of very many Teutonic words thus terminating, I mean, in their Dialect with *beyd*, *beit*, and the like, and by such their terminations predicating, as is said before, a quality, condition, &c. such as *Akenbeyd*, *Fetbeyd*, *Fjningbeyd*, *Hebbelickbeyd*, *Heyligbeyd*, *Mæghdelickbeyd*, and numbers more obvious in every page of *Keliannus* *Dictionarium Teutonico-Latinum*, and elsewhere ; but I fear to be tedious.

Fead (in
Deadly Feud)
derived.

Seeing now what the latter syllable in *Feadum* and *Allodium*, in their several originals, signifieth ; and having taken the words thus asunder, let us next consider of the other part of the composition, their former syllables, which in *Feadum* (the former) is *Fah*, *Faa*, or (x) *Saxon Fœb*, signifying as (x) *Pecunia* in the general, so more *Gosp's*, *Mat.* peculiarly a *Salary*, *Stipend*, *Wages*, intended of uses, ^{chap. 11. 13.} also when we say *Officers live by their Fees*, whilst in ^{x Verbiagz} the other, *Allodium*, the former syllable rightly writ ^{pag. 113.}

ten, is *All*, *All*, or (as with the Saxons) *sal*. Put we now the syllables together again, and then the former will come forth *Fœ-hode*, *Fœ-hode*, or the like; the latter, *All-hode*, and that most appositely, if applied to the Feudists *Feudum* and *Allodium*, considered in their originations and primitive acceptions. The former of

(7) Vide tit.

Feud. i. 1 s. 1.

De his qui
fendunt dare
possunt; Spelm.
Gloss. verb.

Æltonia, p. 253.

Cowell's Inter-

preter, verb. Fe.

(8) Biblioth.

Cluniac. pag.

1390. & (u-

ser. de Feud.

lib. 3. tit. 1.

(9) Verb. Fe-

lonia.

(b) *Vultus*

de Feud. lib 1.

cap. 1. num. 14.

(c) *Kilian*.

Diction. ve. b.

Lors, & Dr.

Zanch. De-

scriptio. jur.

temporalis,

lib. 7.

(d) *Vid. Hato-*

men. de Feud.

lib. 1. tit. 3.

Prag. 4.

without an oath of (d) Fealty be indeed justly taxed for a paradox of such who will have Fece to come of Fides, (whence haply our legal maxime, that all Te-
nures

nures regularly are liable to Fealty:) yet might Fee, by this derivation of it, stand with Fealty, and the Tenants of it be called (e) *Fideles feudales* without a ~~so~~^(e) *pecunie*; a good argument for the derivation of it thus, rather than from *Fides*, as of more scope, and more consistent with Fee of all sorts than that other derivation doth allow. Fees, I say, were holden but in service, *nomine quasi alieno*, the *Dominium*, that at least of Lawyers called *directum*, (though the *usile* were transferred on the Tenant:) the propriety, I mean, remaining and abiding still in the Lord, together with a power of restraining his Tenant from alienation, and consequently such land was but partially, conditionally, not totally and absolutely, granted out. Contrariwise, that which was termed, in opposition to it, *Alodium*, as it was hereditary, perpetual, and patrimonial, so was it sans all condition, free, and in the power of the possessour to dispose of it *ad libitum*, how he pleased, either by gift or sale, without asking any man leave: and as it was hereditary, perpetual, patrimonial, and free land, so was it withall possessed totally and wholly, not as our land generally in this Kingdome in Subjects hands at this day said to be holden *in Dominio suo ut de feudo*, as our Lawyers phrase it, but rather *in Dominio suo ut de jure*, (the owner having *Dominium* both *directum* and *usile*:) or in the Feudists phrase, and after their unanimous, harmonious definition of it, *plena iure*; *integre*; *ex iusto*; or *ex solido*, as (f) Malmesbury hath that which (g) Eadmerus expresseth by *in Alodium*, quit of all services; like Frankl moigne, wherunto Mr. Selden there in that respect resemb'les it. I may call it *absolutely*, *immediately*, or (if

(e) *VI. Spelm.*
Glossar. verb.
Fideles.

(f) *De Gest.*
Pontif. lib. I.

(g) *Hist. No-*
vor. I. 1. p 19.

Vij. Dr. Zouch,
Descript. juc.
temporal.
sect 5.

you will) independently, without acknowledgement of
any superior Lord, not unlike the Prince of Haynault,
holding onely (saith my (b) Author) *de Deo & Soli*,
or, as other absolute Princes, *Gratia Domini*, in a word, in
totality: whence the terms of *pradis immunita, terra*

(b) Spm.
Glossar. verb.
Allodium.

(i) As in *Habditis Metropol. Salisburg. Bibliothec. Cluniac. & Premonstrat. Hilt. Ultraject. & Amst. Cod. Donatio, &c.*

propria, fundus proprii juris, patrimonium, in (i) Charters and elsewhere given to such possessions. Probably, land of this nature was the same with our *Boeland*, which I sometime find in the Latine rending of some Saxon pieces turned by it: (hence a hint to judge of the one by the other:) for what in the 11th Chapter of the first part of King *Canutes Laws* is read *Boeland*: *Li: hpa honne hegen ry. He on hijs boelande cypicean habbe, &c.* and in the old Latine version of it in the Kings Ms. and *Fornalensis*, is turned *hereditas: Si quis Tainus in hereditate sua terram* (it should be Ecclesiam) *habeat, &c.* in another like old version in the book of Rochester called *Textus Roffensis*, is rendred *Allodium: Si liberalis homo quem Angli Thegen vocans, habet in Alodio suo Ecclesiam, &c.* By *Allodium* also is turned in the same Record (*Textus Roffensis*) what occurs in the Saxon fragment exhibited by Mr. Lambard, *Petravulat. in Mopham*, pag. 500. under the term of *agene land: Et si villanus ita crevissit sua probitate, quid pleniter habens quinque bidas de suo proprio Alodio, &c.* *Allodium*, it seems thence, being properly such land as is fully a man's own. Shortly then, *Fendom*, *Fee*, or land holden in *Fee*, is no more (considered in its first and primary acceptation, to which they must have regard that will hope to judge aright of the ground for the first imposition of the name;) than what was holden in *Fee-bode*, by contraction *Feud*, or *Frid*, i. e. in a stipendiary,

stipendiary, conditional, mercenary, mediate way and natures, and with the acknowledgement of a superior Lord, and a condition of returning him some service for it, upon the withdrawing whereof the land was revertible unto the Lord : in which respect, as the grant thereof is improperly called a Donation, being but (k) *Feodalis dimissio*, i.e. a Demise in Fee, so the Deed or Conveyance by which it was demised, is as improperly termed a Charter of Donation, being no more than a Charter or Deed of Feoffment. Such, I say, is *Fendum*. *Allodium* is contrarywise what is holden in *All-hode*, in totality, in a torall, full, absolute, immediate manner and condition, without acknowledgement of any superior Lord, and free from any tie or compact for the returning any service at all for it unto any. Thus far (and I hope not too far, nor impertinently) for clearing the etymon of *Fendum* and *Allodium*, as the argument, so the torture of many learned pens, amongst whose derivations of one and t'other, I humbly crave this of mine (such as it is) may be admitted for future Indagatours, and all others of unforstalled judgments freely to consider-of.

And now to spin on our former thred, and to resume our argument of the Introduction of our Fees or Tenures by the Conquerour, w^ek that etymon coming in the way caused me a while to set aside : I here professie to concurr with them, who upon the question put, resolve it in the affirmative, whereof our learned (l) *Glossarist*, for one, thus : *Feodorum servitutes in Britanniam nostram primum invexit Galichius senior*, *Congressor humeratus*, &c. and a little after : *Deinceps viri regum omnia feodorum gravaminibus Saxonum*

(k) *Vit. Flax,*
lib. 3 cap. 2.
parag. 4.

*non ne auditu quidem: no other Tenures, or, in the
Scotish expression, Holdings of Land, being formerly
here in use but these two, Baeland, and Felcland;*

(m) *Lambard, one saith my (m) Author, a possession by writing, the
in verb. expli- other without. That by writing (so he adds) was a
est verb. Tora freehold, and by charter; hereditary, with all immuni-
ex scripto.*

ties, and for the free and nobler sort. That without writing was to hold at the will of the Lord, bound to rents and services, and was for the rurall people. It may be added, that the former took name from the lands booking, or entring (with the limits of it) in a Codicil, (as then called) a little book, or (as we since call it) a Charter, which if the land were given to a Lay-man, was in way of Seizin delivered to the party that was to have the land, (hence haply that ceremony we retain of delivering a Conveyance as the parties Act and Deed) or, (it to a Monastery) laid and left most commonly upon the Altar: Ego autem licentia & consensu illius, testimonioque Episcoporum & Optimatum suorum, omnes terras meas, & libros terrarum propria manu mea posui super altare Christi in Dorobernia, &c. as it is in the close of a (n) Memorial of the gift of Monkton and other manours to the Church of Canterbury, in the year 961, by Queen Edive, or Edith, whose picture, in thankful remembrance, was until of late reserved in that Churches Treasury. Hence was such a Charter

(n) In Armar.
ejusd. eccl. eccl. s.

(o) See Scriptur. 20. in the Appendix, & Specm. Glossary.
vulgarly known in those times by the name of (o) a Landbor, in the Latine of the times Telligrimum, sometime Codicillum, and the like. Observe yet further, terram hereditario jure conscribere, & liberam proclamare, (the Latine phrase for creating Baeland) was a prerogative royal, or a Royalty, and out of the power of any Subject,

Subject, whence that passage of it occurring in St. Ives grants of lands in perpetuity to the forthcoming Cathedral, and other places, yea, and such a one King; His sebole on ece ynce, i. e. hereditaria iure *conscripsis*, as also that: *liberorum amicorum preclarorum viri*, and such like: King Ethelred's privilege, (as called) confirming to that Cathedral (amongst other things) their whole possessions, is hence by (p) one of the Subscribers called, *cyminger bocunse*. But notwithstanding this Entranchisement, the land was very seldom alienated by the possessor in Franklaignage, without (what the Law of (q) Mortmaine afterward required) a concurrent, or at least a subsequent confirmation from the King, whereof examples are obvious in the List of that Churches lands and benefac*t*ions, published in the Antiquities of Canterbury, pag. 210, as also of the concurrence of the Magnates, or Nobles, in such *Bechland* grants, principally in that of Mallings. You shall have the very words, because remarkable: *Anno Domini DCCCxxvii. Egbertus & Athelwulfus Rex filius eius dederunt Ecclesie Christi in Dunabernio, Mallings in subp*re*ban, quid^a p*ro*p*ri*a, maxima prim*o* idem Ecclesia didicit Baldredus Rex, sed quia (mark this) non sicut de consensu magnarum regis, denum id non posuit voluntate, Eridae, &c. Bechland thus flowing originally from the Crown, upon all forfeitures, and particularly that of the estate of the possessor, for deserting the waers, as if there were no mean between the King and him, the King alone was to take the(r) forfeit. But of *Bechland* more anon.*

Some other kinds of land ('tis true) there were in those dayes, but all (I take it) reducible to the precedent

Vide Specia.

pag. 319, 333.

& Bed. Hist.

Eccles. Anglo-

Saxos, lib. 3,

c. 14. & Chrono-

log. Sax.

anno 854.

(p) Specia.

Concil. p. 307.

(q) A*nno* 9.

Hen. 3. c. 36.

& anno 9*ed.*

Vide Cultu-

man, Norma-

n*ps. 24 in his**bechland*

-either way

comes in man-

dane's o*ne* ofthe ad*vers*ary. Re-cited to, 9*ed.*b*ut* *not* in mode

ps. 24. 1. 2. 3.

ver. 1. 2. 3. 4. 5.

and 1. 2. 3. 4. 5.

in 2. 3. 4. 5.

(r) LL. Tiberi-

per. c. 3. & LL.

Canut. per. a.

cap. 73.

land, that is, granted out in fiefes by the Lord to his Tenants; to be holden of him at summe werte or pa-
tiently, as with *Gaveland* and *Wamland*, so with *Fief* land, being of the same nature: like the Frenchmans
Fiefs seruants, i. *servi serviti*, in respect whereof the
Tenants were bound to be Retainers, Attendants and
Followers to their Lords, Servitors to their Countes, and
were thence called (in the terms of Hen. 1. Laws, taken
up afterwards of (1) *Bretton*) *Folgaris*, concerning () LL.Hm.1.
which see further in Sir Hen. Spelman's Glossary, verb.
Folgaris; & *Folgaris* is also in the Laws of King
Knute, par. 2. cap. 19. b. folio 13 v. 10. folio 13 v. 13. cap. 10.

ap. 8. *Bretton*,
1 b. 3. tract. 2.
cap. 10.

Besides these sorts of land, after ages (since the
Conquest) produced many other, such as, *Work-land*,
Cot-land, *Aver-land*, *Drof-land*, *Swifling-land*, *Mot-
land*, *Bur-land*, *Smyth-land*, *Spur-land*, *Terrains*, *Ensains*,
Pur-land, *Bord-land*, and such like. Of each of which
(for some satisfaction to the inquisitive), in a word
or two:

The first (*Work-land*) is land of a servile nature and
condition, *servile*, as I find it called, as also (what
indeed the word soundeth) *harrasaria*, because hap-
ly at the creation of the manor, and distribution of it
into parcels, charged with servile works, such as plow-
ing and harrowing the Lord's arable ground, mowing,
culling and carrying in his hay, sowing, weeding, reap-
ing, and innning his corn, making and mending his fence,
thatching his barns, and such like, charged (I say)
with servile works, and not with Cens or Rent, or if
also with rent, yet of the twain more especially with
works, and therefore contradistinct, and opposite to
Gaveland, which was land liable to Cens or Rent, or
both.

Work-land.

If also do work, yet surely no man is both one and t'other being decommisioned from, what was the more eminent service arising from them. Herof some foot-steps visible in the 66. of King Edw's Laws.

Col. land.

The second (*Col. land*) that belonging unto, and occupied by the *Cot. men*, *Cot. wifes*, or *servants*, a sort of base Tenants, so called from certain houses, or Cottages, small sheds like sheep-cotes, with some little modicum or parcel of land adjoining, originally assigned out unto them in respect and recompence of their undergoing suchlike servile works, or baster services for their Lords, as before expressed.

Aver land.

The third (*Aver-land*) is much also same with that before called *work-land*, coming of the French *Ouvres*, to work, or labour, but chiefly differing from that in this particular, that the services thereof consisted especially in carriages, as of the Lords corn into the Barn, to Markets, Fairs, and elsewhere, or of his domelick utensils or household-provision from one place to another, which service was of diverse kinds, sometimes by horse, thence called *Horse-average*, otherwise by foot, thence termed *Foot-average*; one while within the precinct of the manour, thence named *In-average*; another while without, and then called *Out-average*; the Tenant in the mean while being known by the name of *AVERMANUS*.

Draf. land.

The fourth (*Draf. land*) that holden by the service of driving, as well of Distresses taken for the Lords use, as of the Lords cattle from place to place, as to and from Markets, Fairs, and the like; more particularly here in Kent of driving the Lords hogs or wine to and from the Weald of Kent, and the Doons there, thence called

called of old *Drosdens*, naturally from the chivves of hogs sent thither, and there fed and fested with mast, or pawnage; the Driver whereof was vulgarly called *Drosdannum*.

The fifth (*Swilling-land*) that let out or occupied by *Swillings*, *Swollings*, or *Sullings*, that is, Plough-lands, coming of the Saxon *us*, a Plough, (in which notion the word may extend to all arable land) the quantity whereof was various and uncertain, containing more or lesse according to the nature of the land, a Plough being able to master a greater or lesser quantity, therereras it is in quality. This (of *Swillings*) I find to be a word proper to the Kentish, even from the Conquerours time, (to look no higher) whose Survey (commonly called Domesday-book) shews *Saling* (and the like), to have been a term in those dayes peculiar to this County, whereby to express the quantity of their land, whilst *Hide*, and the like, was of like use elsewhere. To this head may be referred *Hide-land*, *Yoke-land*, *Aker-land*, *Rod-land*, and the like, being quantities or portions of land let out and occupied by the *Hide*, *Yoke*, *Aker*, *Rod*, &c. and denominated accordingly.

The sixth (*Mol-land*) was the same with *Up-land*, *Mol-land*, of the Saxons called *Dunland*, standing in opposition to Meadow-land, Marsh-land, or Low-land; the Tenant whereof was wont to be called *Molmannus*: the word (as I conceive) being derivable from the Latine *Moles*, a heap, of which see further in the Surveyours Dialogue. Hence probably the name of that place in Ash (the seat and patrimony at this day, and from good antiquity, of the *Harflets*, formerly of the *Septuans*, families.

families both in their time adorned with Knight-hood) called *Bir-land*, being of an advantageous situation for the overlooking of a large level of a rich Marshland.

Ber-land. The seventh (*Bir-Land*) that which was held by the service of bearing, or carrying the Lords or his Stewards provisions of victual or the like, in their remove from place to place, such Tenant being thence called *Berminatus*.

Smiths-land. The eighth (*Smiths-land*) that, in respect whereof the Tenant was bound, as to undergo the Smiths or Farriers office and work, in and about shooing his Lords horses and carriages, so also to find and furnish him with materials (of iron) for that purpose.

Ware-land. The ninth (*Ware-land*) the same that otherwise called in the Latine of the times, *Terra warthia*, or *Terrajacens ad mortiam*, that is land lying, or suffered to lie fallow, coming from the French *Gart*, (their here, as in many other words, being turned into our *w*) whence with them *Terre garte*, for old fallow-ground.

Terra susanna. The tenth (*Terra susanna*) land, not much unlike unto, if not the same with the former, being superannuated land, or land with over much tillage worn and beaten out of state, and therefore of necessity lying over year, and being converted from tillage to pasture, until it may recover state, and be fit for tillage again, the term or denomination coming from the French *Susante*, signifying stale, grown old, past the best, or overworn with years.

For-land. The eleventh (*For-Land*) the same (I take it) that we otherwise use to call *For-aker*, whereof see more in Sir Henry Spelman's Glossary, verb. *Forera*.

Bord-land. The twelvith and last (*Bord-land*) that holden and occupied

occupied by the *Bordeliers*, or *Bordmanni*, the same (I take it) with the French *Bordiers*, i. e. Villeins or Cotagers, such as hold by a servile, base, and drudging Tenure, of them called *Bordage*. You may read both of the one and the other in the old grand *Custumier* of Normandy, cap. 53. Within the signification of the word (*Bordland*) are comprehended also (as is already hinted in this chapter) lands holden in Demesme (of the Saxons termed *Inlands*) and designed to the furnishing of the Lords boord or table, and the maintenance of him and his family in victual. For which see *Bracton*, lib. 4. tract. 3. cap. 9. num. 5. Which kind of land the Saxons used to call *Foster-Land*, *quaest* fostering land, that is land *ad vitium*, a term obvious and very frequent with the religious men of those dayes, who as they had their special Fermes and portions of land assigned them *ad vitium*, so had they other as peculiar to their clothing or apparelling. land *ad vestitum*, which, from the Saxon *cepit. vestis*, or *vestimentum*, they called *Servd-land*. They had withall their *Scru-land*, *sacry-land*, which was such as apperteined to the office, *Sextary-land*. and was intrusted to the care, of the Sacrist or Sexton, and was designed chiefly to the upholding & maintenance of their Church or Temple, both in the Fabrick and Ornaments. Besides all these, they had their *Almes-land*, which was that appropriate to their Almynery, a parcel or place of the Monastery set apart for harbour and relief to such poor people (for the most part) as were allied, or otherwise related to the Monks.

I may not here omit *Over-land*, a name attributed to such land as lieth by or along a Rivers side, and coming of the Saxon *open*, i. e. *margo*, the bank of a Ri-

ver,

ver; whence that known places name lying by London, alongst the Thames-side called St. Mary Overy, compounded of the aforesaid Over, and Aver, betokening a River, or Current of water. Land of this name we have at or near Ash in Kent, alongst the Stour-side, running to Sandwich Town and Haven.

Mond-y-land.

I might to these add *Monday-land*, and the like, which with it fellows, borrowed denomination from this or that week day, and that in respect of the Tenants obligation to such or such servile works or services, upon such or such days of the week, in respect of that land. But I purpose to digress no longer, having for brevity sake, wittingly omitted the quotation of the places where these several names occur, which otherwise I should willingly have added, and shall onely in the Appendix, Scriptura 23, present the Reader with a copy of a Saxon charter making mention of those two, *Fosterland* and *Scruoland*, as somewhat more remarkable than the rest.

Now returning to our *Bocland*, you must know, that notwithstanding that introduction of new Tenures by the Conquerour, we did not straightway forgo our *Bocland*, that kind of Tenure I mean, but retained it both name and thing, witness first what occurs in (n) a Deed sans date of certain messuages, by Roger, son of John, Alderman of Radingate in Canterbury, granted in Frankalmoigne to St. Lawrence Hospital near the city, founded by Hugh, of that name the second, Abbot of St. Augustines there in the year 1137. viz. *Duo messuagia quae sita sunt in terra d. Bocland, de qua nulli respondeo, &c.* where we have not onely *Bocland* mentioned, but the nature of it also in part let forth. Wit-

(n) In lib.
Hosp. S. Lau-
rensis prope
Cantuar.

belie, unto another who may set the fater effect in a little
ancient (as) sheweth the church of Glastonbury, for
the grant of a paue or charter lying subbecting this wall of
the city, betweene Queningate land: being therewar-
ding thus: *Vobis autem manus tenet et ruridam
spematis isteas, hanc agit et inter se fons et Germains
intraeundemque in terris hinc, Domus bay-brokis
self, wheres though shalby is the name of it, (and
ther of Feland, Sex or combs bly) yet the oblonge to
my apprehension, is very obvious and often occurring
under the name and notion somtimes of Tainland,
otherswhise (and I think more often) of Aldeham.
Hence the phrase (for the former) of *Aldeham ad
Tainland*, of *tenere in Aldeis*, for the other: both ta-
ken up (as I conceive) in opposition to Fec; but the
former so termed, because indeed *Beccladis* or *Al-
deham*, was properly tenable by *Thanes*, (hence in the
eleventh chapter of King Canutes Laws, par. 5. The
and Redland in the original Saxon, as *Eigernam Al-
dham* in the Latine version in *Textus Roffensis*, where as
relatives); nor but that (as was sometime held by
Cordwic, as who were not incapable of holding it (with-
out the old overfayre of the Saxon *Frangincro* in Ms.
Lambard, whilso his sonnes whom he) were properly
thane, and entitulacion of place as *Knightes* Fec (pre-
sumed to be the same with the vulgar fayre people) were in
the place whom sicut in this daye in *Sedgess* hands,
as *Knights* *Wardens* (or *Chambers*) with fayre people were
the lord *Glastonbury* (or *Gloucestre* *Gloucestre* *Gloucestre*),
as ymagine in *hispianism* (as it selfe) and
entitulacion of place in the fayre by the myself, where
I have brought especially *gloucestre* *Gloucestre* *Gloucestre*
(¹⁷²).*

(x) In Archiv.
Eccles. Cam.

of landes
T. 1. p. 144.

(1) Vide Cl.
Selden Notas
ad Cadmer.
pag. 170.

bury bounds and ground, that lay no Quicke-
wall, which within in the same place, the men holden
in Free Burgh, are knowne to be. But considering af-
terwards with my selfe, that *England* often occurs in
Landies (as they were called) of the place in the Sax-
on time, I easelgh concluded, or least conceyved, such
houses and ground to be the bounds of our ancien-
England, which sheweth to be still surviving in them, as
if holden in *Allodium*, plene jure, without all manner
of chargeable service, and no other (probably) than
part of those eighty acres of land (at the like) in *Can-*
terbury Survey. In Domesday book thus exprest :
Habentiam (it is spoken of *Burgenses de Colombe*) que-
rrit virginis aera terra super hac quae tenunt *Burgenses*
in *Alodia* (so I read it, rather than *Atodia*) *de Rege*, &c.,
a very ancient book sometimes of St. Augustines Ab-
bey, now with the Kings Remembrancer in the Ex-
chequer reads it: *Item* *terra* *i. Burgenses* *quod idem Re-*
gulus *tenet* *quarum* *virginis* *agri* *de Alodia* *erant*, &c.
The same Domesday book (to prosecute this discourse
of *Allodium* a little further) makes mention particularly
of some *Allodiaris* by name in that Kentish Survey,
and there also we may read to this purpose: *Nec feris-*
fallowis *habet* *Rego* *super terras* *Allodiaris* *terras* *Con-*
suetum *Chene*, & *super bosques* *Isiforme*. And: *In Cania*
quando moritur *Allodianum*, *terras* *inde habet* *Kalevastibene*
terras, *et* *terras* *terras* *S. Thos*, *et* *S. Auguſtini*, & *S.*
Marij, & *super terras* *Godefridi* *de* *Colombe*, & *Godefridi* *de*
Carlesford, & *Almodie*, *et* *Almodie*, *et* *Almodie* *de* *Cil-*
ham, (the last three are mentioned in the Survey
there of *Canterbury*, among the other half lands were
Scyng *St. fane*, i.e. *Scyng* *with* *the King* *of* *Scyng*

Allodianum.

ynd

A

S. 1.)

Sac :) de Tuncet, de Wymore, de Acre, Superficiem
huius Regni fortissime omnes clausores omnium terrarumque, qd
de curia regis habent. Reliquorum qui habent suam Sac-
cam & Sacram. I rather read *is habent*, than *habet* Ro-
manum, because by charters both of the Cathedral and
St. Augustines Abbey, of those succeeding times, I find
the Monks in each place privileged with the liberties
of Sac and Soc, &c. over their *Allodiaris*, as termed in
the charters of the latter place, over their *Thegnes*, or Thenges,
Theines, as in the former, in what form of words see in
the charter of each place, for illustration sake, copied
in the Appendix here, Scriptur. 19. and 20. And least
these various terms (*Allodiaris* and *Thegnes*) rendring
them of a seeming difference, should occasion any sus-
pition of their being not the same, for your satisfacti-
on to the contrary, take this note along with you, that
those who in the Latine charters of St. Austin's, are
termed *Allodiaris*, in the very same charters exhibited
in English, (like as in those at Christchurch) are stiled
Thegnes. But what (may it be ask'd) were they then
which in some very ancient Records of that Cathedral
are named *Threnches*? Indeed I have met with a Record
there, (and you may meet with it here in the Appen-
dix, Scriptur. 21. a choice one in my account, as the
book it self was it seems in his, who in the margin of
the first page of it long since left this note: *Gustadius ut
beni iste libellus, quia non apparet non valens, bene ha-
men valeat, & eis libellum suum presiosius monachis Ecclesie
Christi:)* which makes no slight mention of such
Threnches belonging to the Monks there, in these very
words: *Quia vero non erant alii tempore Regis
Willelmi milites in Anglia, sed Threnches, praecepit Rex, et*

and his sonnes, and his sonnes' sons, & so on, & this has
 time beene called the *Thenges* of the King, or of him
 foyard, which were the foyards of the King, and terra deca-
 rdi, and his sonnes, & so on, & these were to him the
 landes, & greate menes, & good carles, & good
 men, & good women, & good knyghtes, & good seruantes,
 knyghtes, & good knyghtes, & good seruantes, & good
 knyghtes, & good knyghtes, & good seruantes.
 To this purpose Ourayson Denebene, then a Monk
 of the place, speaking of the Archibishops dividing the
 revenue between himself and the Monks: *Sic etiam*
 (saith he) *in Thengis Comites, Barones & Milites,*
Monachos vero, & servos suos & servitores.
 These Thenges doubtless were the same, whiche in
 Domeday book are somwhere called Drenches, and
 if so, your best satisfaction what they were, will be
 from the words explication in Sir Hen. Spelman's Glo-
 ssary, 'But, me thinks, laying their Records concerning
 them together, and then compyng them with the
 fore-mentioned charters of Liberties granted to the
 Monks of Chichester and St. Aug'ustine on the one
 hand, and Domeday-book on the other, Drenches,
 Thenges, Thenges, one and all, may not unifly be ten-
 ded in that bookes blisse, *Abramis*: being such Lib-
 erties, (as the Sixton Thenges is not uniusually termed in
 the old Latin translation), as *Thengis* by *Liberatis*,
 such *Ministria*, *Platies*, *Decanates*, *Nobilities*, as being
 by these places dignified wch some portions of their
Abrahams, or *Brelens*, did ministrare in their nature,
 and have had imprie before, halfe a fedale or even
 a full fedale, (as our term'd *Glorians*) concerning
Abrahams, being permitted to continue in their pristine
 state, exempted from military service and tenure, when

Drenches.

as others were from France, and into Wales, and
their lands converted into a great quantity of land
and tenures. Whether the name of *Douglas* cometh up
from such a cause as our learned *Glossarius*, from his
cord by him there used, is the third form, some person
there is no doubt, from the occasion of (the) similarity
of names; in the Records of Christchurch, known
in that country here before the conquest,
whereas the other sayes that such name flesham is
it before it, (as the Christchurch library there is),
me thinks, some cause to suspect the man descended
from *Thegnus*, *Thanes*, which clearly the Conqueror
had before the conquest. On the other side, if the Rec-
ord (in the *Glossary*) be right, and that within *The-
gnus*, *Drengus*, *Tbagus* and *Allediarii* be (as all the
fore-cited authorities laid together, they seem to be)
Synonyma's, terms identical, then were our Kentish
Allediarii, such as had not revolted from the Crown,
by opposing the Conqueror, whether by their aid or
council, but had peaceably submitted to him in this
Empire, whilst consequently either of the country op-
posing, withstanding, and resisting him and his com-
ing in, had *ipso facto* forfeited their possessions; and
if so, then *Spos* history, whereof so much before, may
well deserve yet another dale, or, if you will, another
spur. But thus far of *Allediarii*, As also of what is denoted
it, *Beckland*, which also she write, altho' quite
ceased with the Saxons, though, as to the chiefe it sur-
vived some time after, under the nation of *Normans*,
into which it was translated of the Normans here, and
of them so altered also in the thing that is become
thus far subject unto Tenures and the opinion of law.

(a) Ms. Sul.
and Title of
Hoc. Act B.
in pag. 390.
(c) L. Jon.
Arch. pag. 61.
Cor. Indit.
p. 1. fol. 1. & 5. in which respect, as one (b) saith, he that can say most
for his estate, saith thus: I am seized of this or that
land or tenement in my Demain as of fee, *Scribariude*
Par.
(b) Cowell, ubi in dominica missa ac defendo, &c. And 'tis most true at
supra.

and (a) more, it was said (as we say) holden, and so
unconquered, whence in time that conquest had received
(a) anions amongst us, that in the Law of England
(since the conquest at least) we have not properly *Allodium*,
Allodium, that is, not any Subjects land that is not holden:
in which respect, as one (b) saith, he that can say most
for his estate, saith thus: I am seized of this or that
land or tenement in my Demain as of fee, *Scribariude*
Alodium, ubi in dominica missa ac defendo, &c. And 'tis most true at
this day, but under favour, it was otherwise since the
conquest, winesse (besides Domesday-book, where
the opposite to Fee, *Allodium*, is very obvious) those
chambers afore-cited, the one of St. Laurence, the other
of Christchurch, (and such like) mentioning land holden
by the Authors or Owners, for which they were
responsible to none, as also the Pinenden plea for the
Archibishops lands of Canterbury, and the grant *in*
Allodium mentioned in *Eadmerus*, evidencing clearly
the contrary, and asserting (some of them) the conti-
nuance of such creations from the King, to whom, after
Tertius Loftus, it peculiarly belongs to grant out,
or pass land in that kind: *Carta Alodii ad aeternam hereditatem*, being their reckoned and ranked *inter crite-
ficiundis Regum inter Anglos*.

Now as our *Feudum* did not presently expire with
the Saxons, i.e. first Authors, upon their vanquishing
and supplanting by the Normans, so neither did our
Falkland but survived and continued after the conquest,
and remains unto this day, though not in the very
name, yet in the thing and substance. For, as afore-
time the Saxons had their *Civitas*, *Gebures*, *Falkland*, &c.
as afterwards the Normans their *Villani*, *Burdensani*,

Falkland.

CHART, &c. To whiche the former held was called *Toll*,
Land of Toll, &c. And was opposed to *Burgage*, when
the latter, *Villenage*, and (in some sense) *Boroge*, op-
posed to *Chivalry*, *Knight-service*, &c. And in all
likelyhood intended by them *Refugee* *privum occurrerentis* *servitio* ^{refugio}
ring in a charter of *Walbatus Manton*, granting the ser-
vity of *Befrey* to the Church of *Rochester*. *Quod*
si aliquid de prediis domino in vestigium servitatem
translatum sit, &c. As it is in Mr. *Goldsens History of*
Tomes, cap. i.i. pag. 315.

As for the original of *Vaga*, there (b) are three (c) (b) Vide Ad-
for us (for the finding of it) to a notable passage in *Geoff. ex f. in M. 44.*
against Tiberianus his book intituled *Dialogus Scacca-* *Paris His. &*
r. iii., who lived and wrote in *Hen. 2.* dayes, which (c) *Twysden Pro-*
bring the Reader better acquainted with the state of ^{(d) in LL.}
affairs in the disposal of our Countrymens Free-hold
in those elder times, when as the English State was new
moulded. I here offer to his view: *Post Conquisito-*
nem, &c. i. After the (c) Conquest of the Kingdome, (c) I turn con-
and the deserved subversion of the Rebels, when the King in analogie to
himself with his Nobles surveyed his new Country, a di- (c) Conquerors
ligent inquiry was made, who they were, which taking turning by
part in the war against the King, had saved themselves by
flight: to all these, like as to the heirs of such as had fallen
in the war, all hope of any lands, (d) possessions, and (d) Or, Reves.
(e) rents, which formerly they enjoyed, was cut off. For (e) Or, Reves
they accounted it no small favour to escape with life am-
der enemies. But those who when summoned, came not to
the war, or being occupied in household or other mercery
affairs, were absent, whenas proofe of same by their own
from (f) servitualists, they had impeached them (f) Or, Chiles
for deserting their Lord, without pay of Justifiction, their
children.

xxxviii *Constitutio ecclesiastica, whether,*

should be bound to observe the stipulations, before so perfect a conquest, and that they should be bound to observe them, though they were to be reduced to their former state; but now that the conquest is made, and the King is the conqueror, he may command what he will, and the Clergy, who are his subjects, should be compelled to submit themselves to his commands, as long as, after consultation upon these measures, it may please him, whatsoever by their deservings, and upon a lawful agreement, they could obtain of their Lords, should be their own by inviolable right. But they should challenge nothing to themselves, (c) by maine of (b) satisfaction, from the times of the Nations subduing. Which thing truly, how directly it is unconsidered of, is manifest, especially when as this by all means, for their own good, they were bound from thenceforth to apply themselves by constant service to their Lorde to purchase their Lords favour. Insomuch as who of the conquered people possessed lands, or such like, obtained them not, in seeming right, due by right of satisfaction, but in consideration of their deservings, or by some intermixt thing or other. Hence we see how precipitately matters stand with the generality of this poor countreymen (in point of estates) to those dayes, and with what obseruance! and what exactnesse! and that were not (d) daily themselves exact and chiefe conquering, of the plaidy of Chartells of Feoffementes so ancient as those times, extant when he obseruayeth.

(c) Or, In
way.
(d) Or, De
Item. I. i.

(e) Or, Obser
vance.

(e) Or, Observe
vance shalby
of the plaidy
of Chartells of
Feoffementes so
ancient as
those times,
extant when
he obseruayeth

sol. 3 v. 1.

Diligently to publish every time and place a Memento of what had late ly done chiefly, and what done heretofore REWITTEN upon whom hee had made his accusations and his charges, to the intent that the same might be knowne to every good man; and that hee might be remembred to obserue his may be created to him (as a good man); & the intent thereof to be to let him knowe what hee had done, and to make him

lib. I. cap. li. quodlibet. Thereon back this passage, and
is written recorded in my library. lib. I. cap. li. *THE KING*
AND THE LADYES IN COUNCIL. *HARVEY*, and *WILL*
MANSON *SHREWSBURY* *THE BISHOP OF BRISTOL*, *THE REVEREND*
MR. CONINGHAM, *MR. GUTHRIE* *MR. BROWNE* *MR. GREGORY*,
performed at the *PEACEABLE* *CONVENTION* *AT ST. MARY*
IN VILLEAGE *ACC.* *The same* *17. AUGUST* *fol. 29.*

(1) *Bradley,*
and elsewhere tells us of a lord of *Tenants*, or *milites*.

fol. 168. a.

170. a. 208. b.

dinner *VILLEGE* *THE SICK* *THEUR* *THEUR* *THEUR* *THEUR*
gratia *Dominorum*, uses but *one* *of* *three* *VILLEGE*,
etc. a *passage*, if not *incident* *verbis*, *scilicet* *instance* *of*
ten *repeated* *of* *him*, in my *judgement* *imputing*
thereby *that* *practice* *of* *the* *Tenants* *carrying* *lavour*
and *complying* *with* *their* *Lands*, *whereof* *in* *VILLEGE*
and *their* *obtaining* *therby* *to* *better* *their* *states*,
and *by* *degrees* *to* *creep* *out* *of* *VILLEGE* *into* *a* *kind*
of *Socage*, a *Tenure* (*thus*) *grown* *so* *that* *latitude* *and*
so *comprehensive* *as* *it* *needs* *to* *make* *that* *Dishotomy*,
into *which* *all* *the* *Kingdom's* *lands* *in* *the* *hands* *of*
common *persons*, *in* *possession* *of* *Tenants* *are* *resolved*,
Cavalry *being* *the* *order*. *No* *writing* *of* *such* *sort*, *but*
little *further* *explanation* *after* *the* *exponency* *of* *the* *thing*,
and *etymologic* *of* *the* *name*, *SOCAGE*, *therm* *in* *books*,
wil *not* *do* *smisse* (*as* *I* *conceive* *using* *discontested* *Tc-*
hunc.

By the common and general opinion of our Law-
yers, *SOCAGE* is *nothing* *else* *but* *such* *domes* (*that* *they* *are*
held *under* *the* *Emperour* *or* *the* *Emperess*) (*as* *Bradley*, *the* (*in* *Lib. 2.*
item *is* *the* *name* *of* *the* *Emperour* *or* *the* *Emperess* *own* *lands*) *cap. 35* *num. 1.*
fol. 77. b.) *and* *such* *lands* *are* *held* *under* *the* *Emperour* *or* *the* *Emperess*,
and *such* *lands* *are* *held* *under* *the* *Emperour* *or* *the* *Emperess*,
and *such* *lands* *are* *held* *under* *the* *Emperour* *or* *the* *Emperess* (*which* *is* *strongly*

In the book of Tenures, where treating of Socage, he saith, that the reason why such Tenure is called, and hath the name of Tenure in Socage, is this: because (saith he) Socagis solita est quod servitum Socie, & Socagium est quod carere, &c. A Servitio a Plough, In ancient time (for so he adds for further confirmation) before the limitation of time of memory, a great part of the Tenants which held of their Lord by Socage, ought to come with their ploughs, every of them and Tenant for certain dayes in the year, to plough the Domine of the Lord. And for that such works were done for the lewdlyhood and substance of their Lord, they were quit against their Lord of all manner of services, &c. And because that such services were done with their ploughs, this Tenure was called Tenure in Socage, &c. This Assertion, followed by the generality of our common Lawyers and others since, not without a kind of popular error, as under favour I conceive, and with submission to better judgements, shall endeavour to evince, without check (I hope, for presuming to control so great, so many, and those eminent Lawyers, whereas here I oppole them not in point of Law, but only in matter of fact.)

The first exception then that I take against this opinion, is its inconsistencie with many several sortes of Seigneury, or land hold to be of Socage kind or tenure; such as Peultreyns, Blakes, Franklaines, West-terms, Burys, &c. By Domesday, and the like, which have no manner of relation to the Plough, or manner of Husbandry, as originally they say Socage had, and therefore shall receive this name, though the cause wherupon it first grew be taken away,

away, by changing the servile money, So Livery, or Servitude (this) provided by the Parsons of the present creation, with a distinction of a double kind of Socage; the one, therfore called a *cause*, the other (⁽¹⁾) *ab effectu*, and to this latter sort (Socage in effect) are those of them referred, as one would say, Socage at large, because partaking of the like effects and incidences with Socage. But this distinction carries with it no great antiquity, being questionable sought out since Bradens time, as necessary to uphold that of his and his followers derivation of Socage from the Plough, otherwise so inconsistent with these Testimoniis. Nor but that I hold them to be Socage, with the common opinion, but from another cause, as I conceive, whereof anon.

In the mean time, I have a second exception against the derivation, which is this: that though that of the Plough may be the chief service, wherein Socage is conversant, yet are the Sycle and the Syth, the Fork and the Flail, and many such like, attendants also upon it, and concomitant services with it in Socage-land: to derive then Socage not ex parte, that being but one species of Socage-servitude, is as improper under favour, as to this day to define *Fiefdom* (comprehending whatsoeuer fee is constituted for any lawful and honest service, although not military) by what the Feudists call *Clerical servitude*, because a chief part of feudal service is military, and that of old fees for the most part were granted on militia service, an error into which (⁽²⁾) *Wm. swin* challenges *Hartmann* to have fallen, in his definition of *Brudew* thence, which my Author calls a definition of a genus, by a species, concluding it not logical.

(1) John M. F. U.
John Braden
Sir. ps. v.
sc. 157. and
150.

(2) John Braden
Sir. ps. v.
sc. 157. and
150.

John Braden
Sir. ps. v.
sc. 157. and
150.

A third example may be shewed by this, that if So, exco-hire, be to be understood to mean the same as King, affre's time, (P) (P) know well therewile, who traied this In those dayes Socage servis was divided betwix the heires males, Whyle then was tracte taken from the Saxon rule, signifying what the never said wchthcon a Plough, (whence exco-hire) for Plough-lands, being a pen-
sion of a penny imposed upon evety Plough, in the name of (4) A Rente called Sall-agras and land, to say Plough-service-land; or how could it in those times becall'd Socage in the fence by this derivation inscri-
bed; which the word So, if it signified a Plough (as is
doh't a Plough-name) being in that sense a French
word, cannot in any reason be shought to have taken
place here, I mean in the Saxons times, and so long
before the French, by their Conquest, and inter-
mixture with us following therupon, had prettied
to supprese and extirpe the English language? But
if it can so pretend to so much antiquity, as being a
term, as well in the original, as in the fence, Normans,
or Frenchmen, then probably they would not have impo-
sed it upon us, as they were predominant, in their
own Country, and in the North of Eng. but doubt
less this was done to make us wear for long by this
condition, being a plough-land, and so forth, as of
affre's time, before the Conquest, when the French had
the better been of the Saxon, and had made us pay it
Norman. This is a good example, and I am bound
with them for a Plough-land, and so forth, (having
their characters nowe changed) which is almost
here with us unthick, calling them, without likely, as
had been called (5) CANTERBURY, calling CANTERBURY a monastic
Tribute

(P) Mirroir,
capr. sc. &c.
Followed by
by Cate. Instit.
PARIS. 1460.

(4) Vide Fac. 1.
Ed. &c. cap. 6.
Lamt. expli-
cate. v. b. in
ve b. Ara-
tionis ele-
emosyna, &
Spir. Concil.
PG. 130.

(5) See the
Grand Cul-
mire of Nor-
mandy, ca. 16.
and 53. with
the glosse
there; and
see Ordene
Tit. Edder.
D. 131.

(6) Vide Spec.
Gloss. v. b.
CANTERBURY.

93

Tribe by our ancestors called the **Moths**, was
therefore called **Congregatio**, **Congressus**, **congre-**

atione, **Socia**; (a) **Notitia** **REX** **linea** **of the Kings** fol 19 (b) **Liber** **URBIS**
narrat, he faith **in his** **imperial** **vera** **materiis** **erant** **item** **liberi** **homines** **liber** **recomes**, **quorum** **quidam** **cum** **per** **pa-**
terioribz **&** **tenementis** **sute** **ejus** **fuerant**, **eadem** **postmodum**
in **Witteringius** **renenda** **resum** **ferunt**: & **qui** **bus** **of** **rods**
tenementis **comitibus** **Regis** **esse** **descendantur**, **qui** **pro** **cessu** **fuit** **qui**
ne **scilicet** **facient** **ad** **Constitutis** **vel** **Hundredis**, **vel** **ad** **al-**
iquas **inquisitiones**, **as** **if** **as** **vel** **juratis**, **nisi** **in** **materiis** **can-**
tibus, **dimicem** **pro** **terra**, **quorum** **congregationem** **ratio**
Sociam **appellatur**; & **hinc** **est** **quod** **Saxons** **badie** **di-**
cuntur **esse**, **a** **Socianis** **derivative**, **etc.** Where, though
he say that the **Saxons** were **Custodes Regis**, yet he
sayes not that thence they were called **Saxons**; but
that their **Congregation**, (their **Assembly** or **Com-**
pany) was called **Saxo**, and hence it is (as he) that
they are styled **Saxons**; for they are derived from
Saxo, **Scot**, **Withe**. Now if from **Saxo** (an **Assembly**
of **Husbandmen**) then not from **Sw.**, **Sw.** **or** **Sw.** (**a**
Plough), **piugydo** **or** **scall** **and** **bar** **and** **to** **sw** **sw**.

To come now to **Sw.** which I conceive to be the **Saxo**, a new
light and derivation of the term (**Saxo**). To derivation of
expound **Liberty**, **Immunity**, **Franchise**, **Jurisdiction**,
Power, **privilegio**, **etc.** our **Saxon** **Ancestors**
were **homines** **notiue** **and** **use** **a** **word** **somewher** **enti-**
ting **and** **name** **of** **them**, **viz** **Sw.**, **Sw.**, **Sw.**, **Sw.**, **and** **the**
like, **Sw.** **(corresponding** **to** **instances**) **Sanctuary**, **the** **privilegio** **concerning** **to** **call**, **was** **of** **them** **sermed** **Aluredi**, **c. 3, 7,**
Myrcius, **Sw.**, **otherwise** **(a)** **cylicena** **Frype**. With **(x)** **Spem**,
Wassatio (**wynn**) **had** **signified** **a** **jurisdiction** **to** **keep** **yoce**.

(c) *Mem.*, L. *the peace.* (f) *mitigation*, *an immunity from service*
in war; or *from punishment*. (e) *blagovost'*, *the Lord's*
protection against men or enemies. (a) *homage*, *being*
of a double force, *signified both a privilege or appro-*
pation & royal assurans upon a man in his own house, or
under his own roof, and a liberty or franchise to hold
plea thereof, with power of animadversion by master,
or fine. (b) *ralrocene* *imparted a liberty or privilege*
of Faldage, debarr'd and denied unto Tenants in times
past, and by the Lord, for the enriching his own Do-
mestne lands, reserved to himself. Hence their word,
Faldwrth, for him that enjoyed such a liberty. Shall I
now give you one example from the Normans? *Nisi*
lau enim Sacrum habes impunit peccandi, *say the Laws*
of Hen. 1. cap. 24. speaking of Barons having *Socb.* And (to enlarge yet a little further touching *Sacb.* &c.)
as it signified a Liberty, Immunity, Franchise, Privi-
lege, Jurisdiction, &c. so withall a Territory, Pre-
cinct, or Circuit, wherein such a Jurisdiction, and such
Privileges were to be exercised, and that as well in a
simple, as a compounded notion. Hence (for the for-
mer) *Sacba* of this and that place so obvious in Domes-
day-book, whereof some instances in *Anglia prope* by
name, *sacba de Domedby*, *Sacba Belisford*, *sacba Tad*,
Sacba de Aconbury. In this sense it frequently occurs
in Hen. 1. Laws, where you may also often meet with
(f) *Sacra Placitorum quae quidam habent in suo de-fine*,
Placitorum for and other such like passages. In the same sense the
Placitorum *Reguli hath it*, fol. 1. a. as also *BRAFFON*, lib. 5. tract. 8.
cap. 2. num. 2. In the *Statute de Gavelote*, made anno
10. *Edw. 3.* (where the Custodes, the Guardians of the
Soke, are termed *Sakewi*, of Dr. *Cawell* turned by
Ren.

Rent-gatherers) and in the Statute also 35. Hen. 8. cap. 29. it is used accordingly. Thus of *Sok*, or *Soken* simply. In composition it occurs often with *Port*. As for example, the *Knights gild*, sometime in or near East-Smithfield London, erected first by King Edgar, and confirmed with some enlargement afterward by succeeding Kings, (being a portion of ground enfranchised with special liberties, to be enjoyed within that extent of it set forth by (d) *Show*) was anciently called a *Sok*, and afterwards, (because lying by Eald-gate, now *Algate*, *Port* being added, or rather preposed to it) *Port-soken*, being for extent and otherwise, I take it, the same, which at this day is known there by the name of *Port-soken-Ward*. Here now we find it restrained to a part only of a City, a particular Ward, but in some ancient Charters of Liberties granted to several Cities, and other like places of this Kingdome, and particularly to London, you may find it spreading itself to the utmost skis and liberties of the City without the walls, as in H. 1. (4) Charter to that City, anno 11. of his reign: *Et quod infra muros civitatis, neque in Port-soken, nemo capitali bospitium per vim, sed per liberacionem Marescalli, &c.* The like occurs in several charters to the city of Canterbury, whereof one of Henry the second's thus: *Concessit etiam eis quietam in muris infra urbem, & in Port-soken, & quod nullus, &c.* Another (of Henry the third's) thus: *Concessimus etiam quod nullus de civitate vel Port-soken sua capite vel recte-
zio de aliquo crimine vel fornicatio pro quo debet imprisi-
mari, imprisionatur alibi quam in prona ejusdem civi-
tatis, &c.* A little after: *Et quod nullus exterior per fa-
ctum Portulanum in Civitate praelecta, vel in Port-soken sua*

of ~~the~~ ^{the} ~~Commonweal~~ ^{Common} ~~Chancery, &c.~~, I spare no pains to add more information, it being plain enough by thence, that the liberty of the place in the full extent of it, is intended by ~~the~~ ^{the} ~~Franchise~~ ^{privilege}; you may call it, not improperly, the Extent of the Franchise. The fore-cited Statute 32. Hen 8 Cap. 29. by occasion there given to mention the Soke of Os-
wellsbeck in Nottinghamshire, pleth the terms of Lordship and Soke incidenterly, to express the territory whereto the custome there mentioned rook place, whereby it seems our term (Soke) also signified a Lord-
ship, the word extending thereto, I conceive from the
exten^{sion} of the privilege so called throughout the
whole compass of the Lordship, viz. that whoever
is dignified with it, and its constant concomitant Sar,
regularly all Lords of manours are, hath that domin-
ion over all manors and waters of his Territory or Lord-
ship, so freely to hold place, and have and take cogni-
tance of the one, and between the other, in such man-
ner, as more as by the language of Hen 1. (1) Lawes
decent for his Soke, his cognizance, as being shaply
bygged, convenientous or casual matters referret to
the King and his Justices. Hence to have Soke, or so
ke superciledges, after a book of Chancery Can-
-

(f) Cap. 22.
whereas or as
credit, I read
exceedit, accor-
ding as the
24th chapter
hath it.

(e) Sir Edm.
Giles, Instit.
par. 3, p. 330.

covenants, and trespasses of his men and servants. Within a little after he proceeds to derive it, in a different way (though not without some company) to what is here aforesaid; how rightly *judicent alii*. Shortly, *Soc.*, *Soke*, *Sacme*, and the like, (not to mention its derivation in *Clement Reyners* (b)) *Onomasticon*, and some others) betokened we see, both a Liberty, Priviledge, Franchise, &c. and a Precinct, or Territory, wherein such a Liberty, &c. was exercised, if you will, a Sokenry.

(b) Before
his Apostolatus
Benedictino-
rum in Anglia.

And resolving our Socage (the Tenure so called) to be deriveable from *Soke*, considered under one of these acceptions, I stood irresolute a while to which of the twain I should referr it. Once I intended to pitch upon the latter: and then me thought, as the territory, precinct, extent, circuit, &c. of a Lordship or Manour was called *Soca*, and *Socmannia*, so probably the men of that Territory, Precinct, &c. in respect of their relation to that Soke, and their dependance upon it, and the Lord thereof by Tenure, were termed *Socmanni*, that is, men apperteining to the Soke, or Lordship, *quasi Soce ascriptissim*; *homines Soce*: and consequently, as in that respect the Men were called *Socmanni*, so their services, (those duties in works, provisions, moneys, or otherwise, which by their Tenure they were to return to the Lord of the Soke) were called *Socage*; tract of time having added to *Soke* or *Soc*, (what a (i) famous Lawyer of these times calls a legal termination) *agium*, in composition (laish he) signifying service or duty, as *Honagium*, the service of the man; *Escagium*, *Servi-
tium Scus*, &c. And so the parts being put together, (*Soc* and *agium*) it comes forth *Socagium* in Latin, *Socage*

(i) Sir Edm.
Coke, Institut.
par. 1. fol. 86 2.

Socage in English (Thynke I say) was it sometime in my thoughts to have derived Socage, and indeed not altogether improperly in a large sense; all sorts of Tenants of or to a Soke, (the *Civis Tenensum a Vassallo*, the *manstris*, the *Hanage*, as sometime called) being from their relations to the Soke or Lordship, and the Lord thereto, not unlitle called *Sokmanni*, and their service & tenure consequently *Socagium*. But at length, upon second thoughts, I concluded this somewhat too large and vast a derivation, as being comprehensive of all sorts of Tenants, *Villeins* and all, which, with the

(1) In the
word *Ville-*
neg'.

(1) Fol. 35.b.
& fol 79.b.

(2) Autour of the Terms of Law, I conceive to be improperly called *Sokemen*, or their tenure *Socage*. Besides, when I first pitch'd upon that derivation, I conceived the tenants whole service to be (if I may so call it) *Social*, respecting onely the Soke, not foreign, where-as afterward I found that *Socage-service* was not so to be restrained, it being ordinary with Tenants in Socage to do service *extra*, or *form*, *Socam*, as to ride with their Lord from manour to manour, (like the *Rid-Knights* in (1) *Braffon*) to carry and pay rent to the Lord, and to deliver him corn and other provisions at his Granary or elsewhere out of the Tenants proper Soke, and the like: in which respect also with what incongruity are pure *Villeins* called *Sokemen*? since they are so far from being *strict* to the Soke, that they may be commanded out, and employed abroad wheresoever the Lord shall please, as well without as within the Soke. Changing therefore my opinion, as to that derivation, and looking further back to that other (the former) sense of *Socia* (Liberty, Priviledge, Immunity, Franchise, &c.) I resolved finally to derive and fetch it thence; and thus I make it good.

Amongst

Amoght other sorts of land, our books are full of that called *Terra servita*, 'Villain-land, land holden in Villenage, servile land, such namely' (for fuller explanation of it) as that holden at the Lords will, both for time and services; in both respects uncertainly; for (n) Vide *Bryson*, fol. 163.
 a. & fol. 181, a.
 208 b.

time, it being in the Lords power (of old *ym*) at least it was so) *tempestive*, or *intempestive*, to revoke, and resume the same out of the Villeins hands into his own, and for services, the tenant being altogether ignorant, and not knowing over night what service may be required of him the next morning. He might also have greater or lesser taxations laid upon him, at his Lords will: nor might he marry his daughter without a Fine to his Lord, for his leave and licence, & *it's semper renebitur ad incerta*, saith my Author. Now to defend land against the Lord from Villenage, and to come off acquitted of this servitude and servile condition, it was and is necessary of the tenants part to shew a tenure of his land, by opposite and contrary services to those in Villenage, that is, *per certa servitia*, by certain, expresse, definite, servites: and, as otherwise it may be concluded; that his tenure is Villenage, so hereby, if the service be not Regal, or Military, it is as clearely Sogage. For, that *certa servitia*, are Superseadas to Villenage, and do make it to become Sogage, proofs are obvious. To this purpose consult we *Bryson*, lib. 2. cap. 15. num. 9. 15. also *cod. cap. num. 9.* where he is expresse for the tenants acquital from all other services (some being expresse in the Charter made him by his Lord) than whiche are specified there. In. *Aliis omniis servitiis & conseruacionibus qua expressa non sunt in charta deinde non servient et non requiriad*

ex his specialibus non erit. See him again, eod. lib. cap. 36. num. 8. at these words: *Cum tenetur Socage, videtur defensore et amministratore erga Dominum suum per certam redditum in pacuisse numerata, vel per quid satis, quod tantundem valeras, qua consistunt in pondere, numeris, et mensura, in solido vel in liquido, sive frumento, vino, alio, secundum quod redditum diversimode accipiantur, &c.* Have recourse also to the same Author, lib. 4. tract. 1. cap. 23. num. 5. at these words: *Dum tamen servitia certa sunt, si autem incerta fuerint, qualitercumque servis remunerationem, sunc erit Villenagium, &c.* Add, as agreeable hereunto, that of Sir Edw. Coke, in his Commentary upon *Littlton*, Sect. 120. *To Tenure in Socage* (saith he) *certa servitia* do ever belong. Hence it is, that the Author of the Terms of Law, expounding Socage, or tenure in Socage much after the same manner with Bratton, ubi supra, (to wit lib. 2. cap. 16. num. 9.) saith, that *to hold in Socage*, is *to hold of any Lord lands or tenements, yielding to him a certain rent by the year for all manner of services*. You see it proved then, that *certa servitia*, certain services, so they be not military, make a Socage tenure. The ground whereof is obvious, viz. that by such tenure (*per certa servitia*) the tenant hath a *Sake*, a priviledge, an immunity, a *Quicquid est*, as from Villenage in general, so from all villein, military, or other services than those by contract, or custome (*n*) charged upon him; a *Sake*, I say, whereunto *against*, being added, signifying the service or duty to be returned for that priviledge, it comes forth *Socagium* in Latin, *Socage* in English, as, by putting man to *Sake*, the Tenure is signified, and called *Socagius*. But if *Sake* here carry with it such a sense,

(n) Vide L. 1.
Edw. Confess.
apud Cl. Seld.
Mot. ad Ead.
mer. cap. 35.
pag. 184.

sence, (of Immunity, Discharge, Priviledge, &c.) how comes it then so passe (may some perchance demand) that *liberum* is often found to accompany *Socagium*, as *liber* also doth *Sermannum*? For answer, I conceive, to Solution: distinguish Free Socage from Base. Not but that Base Socage had its priviledge as well as the other, as being holden by services ~~set~~ and certain, or determinate, but in regard those services regularly consisted in servile works incident to Villenage, the tenure gat the name of *Villanum Socagium*, to distinguish it from *Liberum Socagium*, acquitted of those servile works, and consisting (^e) in *denariis*. From hence also (such a *Sake*, such a Priviledge) it is, that the *Villanum Socagium* in the Kings Demesne is turned of (^p) *Braffon* and others, by *Villenagium privilegiatum*. By the way, hence judge whether I am not right in my derivation of Socage from *Soc*, *Sake*, &c. a Priviledge, &c. when here you see *Villanum Socagium* of *Braffon* and others, rendered by *Villenagium privilegiatum*, i. e. privileged Villenage.

(e) *Braffon*,
lib. 1. cap. 35.
num. 1. The
rent hence
called Quil-
rent.

(p) Fol. 7.a.
fol. 170.b. fol.
272.a. fol. 209.
a. *Fleta*, lib. 1.
c. 3.p. 8.

'Tis time now that we inquire how this derivation will suit with those before remembred tenures, *By divine service*, in *Frankalmoigne*, *Fee-Firme*, *Petite Seigneurie*, *Eſemage certain*, *Burgage*, and the like. Whereunto Ianſwer, Very well. For, as they were all, through a tacite discharge from corporal service in warfare, excused from military Fee, or Tenure, so on the other side, by reason of an express tenure *per etria servilia*, or *per certum redditum*, common to them all but *Frankalmoigne*, they were rendred quit and free of Villenage, and consequently became of Socage tenure. As for *Frankalmoigne*, as it may challenge an interest in

the composition of Socage from *Ser* or *Soke*, and a
giver, to wit, in the former syllable, so on the contrary
side, hath it as little to do with the latter, because such
tenure is quit of all service whatsoever, as well spiri-
(9) Coke upon *Trial*, (unless (9) uncertain) as temporal. But because
Littleson, in *Fraskalmeigne*, as it hath not to do with military service on the one
hand, so neither with Villenage on the other, and hath
its priviledge expressed in that epithet of *Libera*, it is
referred to Socage, as in some sort such.

This then is that (this tenure *per certa servitio*) that
makes tenure by divine service, of no relation to the
plough, to become Socage. This makes also Fee-feme,
a meer censual service, (much in the nature of that
(r) *Lib. 1. f. ag. rectigal.* which among (r) Civilians is called *Ager rectigalus*)
as being liable only to so much yearly rent, without
any other service regularly, unless Fealty, suit of
Court, or the like, according as the Feoffment may
run, and having nothing to do with the plough, to be-
come Socage. This makes Escuage certain, another ten-
ture of no relation at all to the plough, but *quatenus*

(f) *Braff. fol. 37.a. & 79.b.* Escuage, as it is simply Escuage, *ei ipsi*, of (f) Knight-
services, because by being certain it draws him not forth
to any corporal service in war, to be also termed Soc-
age, whilst contrarywise what is properly called
Escuage, that namely which is uncertain, and so cal-
led, because (besides its subjection to Homage, Fealty,
Wards, and Marriage) it is uncertain how often a man
shall be called to follow his Lord into the wars, and
again what his charge will be in each journey, from be-
ing liable; b say so this uncertainty of duty is (f) Knight-
service. Henc (fourthly) it is that Escuage (a tenure

(t) Dr. Comell. Interp. verb. Escuage. no way differing of the plough, or village, being cut-
rant

rant and conversant onely in cities and towns) because holden for a certain annual rent, becomes with the rest Socage. Hence also our Kentish *Gavelkynd*, considered in its name or term, (betokening censual land) of no affinity with the plough, or plough-service, because, I say, holden *per curia servita*, comes to be called Socage. The like might be said of *Frank ferme*, and of other the remaining species of Socage-land: one and all, as properly so called, as rightly, and with as much reason referred to that head of our English tenures, as that which for its plough, or tillage, service is said to be more peculiarly so called, standing not in need of that distinction which the common opinion useth to bring them within the compasse of it, called *ab effectu*, because of like effects and incidents belonging to them with Socage tenure; a distinction by this derivation rendered frivolous and needless, and under favour therefore as fit to be laid aside, as their (*u*) assertion is (*u*) Coke In-
to be retracted, who, to vindicate the retaining of the ^{stir. par. 1. fol.} name of Socage, as of use onely to distinguish that ^{86. b. Bacons} from a tenure by Knight-service, affirm that the cause ^{Elements,} wherupon the name of Socage first grew, *viz.* Plough-
service, is taken away, by the change of such service into money, whereas presupposing our present derivation of Socage to be admitted, both name and cause still continue. Thus much for Socage, a term that to me first occurs in *Glanvill*, never as yet in any elder Record. In a Roll of (*x*) Accompts of the Archbi-
shop of Canterburies manours, for the sixth year of
Archbishop Baldwin (*Glanvills* Coæcanean and Com-
panion in his voyage and expedition, with King Ri-
chard the first, to the holy land) which by computa-
(x) In Ar-
chiv. Archiep.
Cant.

downd the yere of our Lord 1190. it occurs by the name of *Soggagium* thus: *Super Soggagium London remanent xxii d.* and this in Croydon manour there, amongst the expences and deductions following the receipts of that year. Which I mention, not as conceiving it nockier than *Hn. a. dayes*; yes I rather hold *Semannus*, *Socmannia*, and *Sacagum* to be relatives, and consequently that where the one occurs, the rest are implied: but *Semannus* is obvious in Domesday-book; and less ancient therefore I perswade my self *Sacage* and *Socmannry* are not.

Virg. 5. Ac-
cord.

¶ *Nunc age, carpe viam, suscepimus perfice manus.*

Now therefore to come to our *Quere*, (whether *Gavelkind* be a Tenure or a Custome) and give it an answere: I confess there are that in some sort hold the negative, as who will have it to be a Custome accompanying the land where it obteineth, rather than a Tenure whereby the land is holden, holding the whilest the Tenure to be *Socage*: And of this opinion (1) Mr. *Lambard* doth more than seem to be. Now between Tenure and Custome in this case with us, the difference, as I collect, stands thus: admit it onely a Tenure, and then the nature of the land is not concerned in point of descent; so that in some cases (as the escheat of it by Death or *Cessavit*, to the Lord that holds over by Knight-service, or to the Crown by forfeiture in treason and the like) it ceaseth to be any longer of *Gavelkind*-nature, in point of descent, and goes not, as before to all, but onely to the eldest of the sons, according to the course of the Common Law: whereas

(1) *Parabol.*
PAG. 535, 536,
537.

whereas if it be a Custome following the nature of the land, then it is, say they, inseparable from that land where it obtaineth, insomuch as notwithstanding this escheat, or whateuer other alteration of the tenure, it remains, as before, partible among all the sons, or other heirs where sons are wanting. But to the point. To prove *Gavelkynd* to be a tenure, I shall not need, I think, to multiply authorities, the generality of those ancient deeds that I have seen for the granting lands in *Gavelkynd* (whereof some are exhibited in the Appendix) are wont to have their *Tenendums* (the usual and more proper place for the creation of a tenure in any kind of grant) thus phrased: *Tenendum either ad or in Gavelikendam*, or the like. The office recited of Mr. *Lambard*, in his *Peramb.* pag. 540. found after the death of *Walter Culpepper* is alike phrased: *Tenuit in Gavelkind* being a much repeated passage in it. The Statute 18. Hen. 6. cap. 3. in terms calleth it a tenure, taking knowledge, that there were not at that day within the Shire above 40. persons at the most, which had lands to the yearly value of xx. pounds without the tenure of *Gavelkynd*, and that the greater party of this County, or well nigh all, was then within that Tenure. And this alone (which I shall add) may evince and clear it to be a tenure, that since the Statute of *Quia emptio est terrarum*, anno 18. Edw. 1. prohibiting the subject to let land to be holden of himself, as there are not to be found any more grants of land (x) *pro homagio & servitio*, so neither in *Gavelkynd*. For brevity sake, I will urge no more authorities of this kind. Being thus then apparently a tenure, how cometh it to passe that we so usually call it the *Custome of Gavelkynd*, seldome

Fleta is ex-
plicable for this,
lib. 6. cap. 17.
pa. 49. where
h. f. i. sh. *tunc*
in tenuram de
Gavelk. inde
ve. alibi, ubi
terra paup. est.
See Regist.
orig. fol. 78. b.

(x) *epitom.*
Gloss. crib.
Homagium.
Objection.

Solution.

either making or finding mention of *Gavelkynd*, but with that adjunct, and under that notion of *Custome*? Indeed the property of equal partition is and hath so long been of that eminencie in our Kentish *Gavelkynd*, and it so much celebrated for that property, that as if it were the sole and onely property of it, all the other, in respect wherof this land may as well be called *Gavelkynd* as for this, are as it were forgotten, and that onely carries away the name from its fellows: whereas that of Partition (as hath been laid before) is but one among the many other properties and customes in our Kentish *Gavelkynd*, such as *Dower of the Moyety*;

(a) Herof see *Bracon*, fol. fol. 313. a.
 (b) Wheroft also in him, fol. 176.b.

(a) *Lesse of Dower by marriage before or after assignement*; (b) *Not to forfeited lands for Felony*; *Power of alienation at fifteen years of age*, and the rest obvious in the Kentish *Custumal*. And because this of Partition, amongst the rest, properly depends of *Custome*, as thwarting the course of the Common Law in like case, hence the *Quare* grew at first, whether *Gavelkynd* were a *Custome* or a *Tenure*. Indeed a very improper and incongruous *Quare*, and occasioned by the want of that distinction of the *Genus* from the *Species*, which through inadvertencie are here confounded, *Gavelkynd* being the *Genus*, & *Partition* the *Species*. So that if we shall but reddere singula singulis, this doubt will quickly have an end: *Gavelkynd* generally spoken of and in grosse, is the *Tenure*; particularly, and with reference to this *Partition*, it is a *Custome* accompanying the land of that *Tenure*. Or, if you rather will,

Gavelkynd is the *Tenure*; *Partition*, and the other properties, the *Nature*.

Which Solution gives occasion of another *Quare*,
and

and that indeed a main one: Whether (namely) this Custome of Partition in Gavelkynd-land, be so inherent in the land, and so inseparable from it, that notwithstanding the Tenure of the land be altered, yet the land shall still retain this property? No more (I take it) than the rest of the fellow-properties as much depending upon Custome as that, and for which the land may deserve the name of *Gavelkynd*, as well as for that, and therefore some perhaps will lay it shall retain them all indifferently. I shall not here ingage as an opponent, onely invited by this fair occasion, crave leave to propound Academically, what in like case I find delivered by others, conducing (in my judgement) to facilitate the resolution, leaving it to such as have more will to debate, and better skill to decide, the question than my self, to give a fuller and more peremptory resolution in the point. I may (I take it) not improperly state the question thus: Whether the person in this case shall follow the condition of the land, or on the contrary, the land that of the person. The former (it seems) takes place in Paris, the French Metropolis, by the custome of the place: whence that of *Choppinus*, treating of those Customes, pag. 316. *Parisiensi autem mancipio* (saith he) *quod gentilista pariter fulges Nobilitate clarorum virorum, usus familia herciscunde minus est abnoxius iuridice. Ubi scitum, non personarum, sed fundorum conditio nobilis, plebeiave partes assignat.* To which he adds a little after: *Hanc ideo tamen dividendarum hereditatum ratio immutata est Parisis: cum nobilis fundos, plebeis nobiliter, & ignobiles aequo jure generost invicem partiantur.* To the same purpose (e) our (c) De morib.
Author elsewhere tells us, that *priseo quodam Gallici* Parisior. p. 57.

fori usu, plebiorum fundis band ideo pristinam exuebat
condisionem; quod a recto ipsius Domino esse comparatus
esset: Ni eis nomine comparator in clientelam se, una
cum superiori fundo suo, ad patronum contulisset; which
his margin elsewhere (d) records thus: *Anciennement
les rotures acquises par le seigneur direct, se partageoient
roturierment, si non que le ait acquereur les comprint en
l'adveu de son fief, le rendant au superieur.* Thus went
(it seems) the more ancient Custome in those parts.
But tempora mutantur. The case of latter times is al-
tered there, as the same Authour gives us to under-
stand in both the last fore cited places: *At posterioris
avii Jurisprudentia, mutatis calculis, novam invexit ser-
vientis fundi unionem tacitam, & consolidationem cum
aliero dominante, ac parem adeo utrinque qualitatem pra-
nobilem: Nisi illius empator subinde contestationem inter-
posuisset contraria voluntatis.* Thus in the former place.
In the latter thus: *Nostra tamen etatis moribus, diver-
sum obtinuit, censuales nempe & obnoxios agros solâ per
rectum Dominum acquisitione, prorsus uniri, in unumque
redigi cum praedio dominante: nisi protinus empator con-
traria voluntatis contestationem interposuisset.* The effect
of both is this, that Censual lands by purchase com-
ing unto the direct Lord (the Lord of the Fee, or Over
Lord) are, *ipso jure*, Feudal, and shall accordingly de-
scend, as thereby re-united to the Fee, unless the buyer,
at the time of purchase, do protest to the contrary.
Will you please to hear his reasons? *Unionis nempe vis
illae oportet producitur, ut ignobile pradium, militari junctum,
nobilitetur: eque plebeio ac sotii vettigalibus obnoxio, trans-
eat in feudalis clientele fortum liberosorem.* Thus he, *De
moribus Parisior.* pag. 58. Much what one with that in
the

(d) De Do-
man. Franc.
p. 4c.

the other place (*De Domanio Francie*, pag. 41.) *Quoniam tacita pradiorum unione, confusa erant jura servitium, census & solaris vectigalis: Cum rei proprie nulla superforet servitus, exindeque vectigalis fundi qualitas esset immutata.* Thus he, whom see also, if you please, *De Domanio Gallico*, pag. 168. num. 2. Also pag. 284. num. 1. To whom add *Hotsman*, *De Feudis*, l. b. 1. tit. 5. parag. 2. in fine. You see by this how the present case stands in some parts abroad. Here at home, as it seems by the very *Custumal of Kent*, in two several cases therein specified, the descent of *Gavelkynd-land* is changeable, and the land becomes unpartible; first (namely) when by escheat, happening either by Death, or *Cessavit*; next, when, by the tenants voluntary surrender, it comes into his Lords hands, who holds by Fee of *Haubert*, or by *Grand Sergeantcy*, both which (*e*) Mr. *Lambard* takes to be Knight-service. To which may be added two other cases, which occur in an ancient Kentish Eire, in the Exchequer, ann. 29. *Edw. I.*, where enquiry being made, and the question propounded to the Kentish men, how many ways *Gavelkynd-land* might be altered, and delivered from the ordinary and customary descent, answer was given by four, instancing in the two former, and to them adding those other two, namely, 1. *Per licentiam Regis*, (by the Kings licence) and, 2. *Per chartam Archiepiscopi*, (by the Archbishops (*f*) Charter.) Against this, and on the other side, (*inter alia*) may be opposed what is pleaded in the fore-remembred controversy between *Burga de Bindings*, and the Prior and Convent of Christchurch Canterbury, wherein the Prior, in barr of *Burga's* claim to the moyety of his and the

(*e*) *Perambly.*
pag. 537.

(*f*) Of this
some exam-
ples before,
Propof. 2. to-
wards the end..

150 *Gavelkynd-partition; whether*

(g) See the
Append. Scri-
p. 5.

Monks manour in Francbank, (g) pleads, *Quod Domi-
nus Rex qui manerium illud deinceps sibi suis,
non tenet illud nomine Gavelkynde.* Whence (admit-
ting the plea for Law) naturally seemeth to resule this
double consecutary. 1. That the King may hold land in
Gavelkynd. 2. That the King holding land in *Gavel-
kynd*, in case he shall grant it away to any religious
house, *in param & perpetuam elemosynam;* (in Frank-
almoigne) it remaineth notwithstanding partible, as be-
fore it came to the Crown, in their hands at least
whom the religious men shall infcoffe with it. Much
more doubtlesse might be said in the point, as well *pro*
as contra: but I shall leave it to be further argued by
Lawyers, adding onely in a word, what upon the
whole matter I conceive of the case. I would ask then,
if our Kentish *Gavelkynd-land* be partible *quatenus Ga-
velkynd?* I expect no other than an affirmative answer.
If so, and admitting withall that such property in *Ga-
velkynd-land* owes it self to a custome accompanying
land of that nature; yet I suppose it shall enjoy that
property no longer than the land it self continues to
be *Gavelkynd*, which some hold it is not, being once
returned and come back again into the Lords hands,
(the King especially being Lord) that granted it out in
Gavelkynd, or of whom it formerly held in *Gavelkynd:*

(h) L. adigere. because then, as (h)cessante causa colligitur effectus, so by
parag quam-
vir. De jur. reason of the unity of possession, the *Usufructus* (I can-
not well English it) being consolidated and made one
patron. c. cum
cessante extra. with the property, that property of being censual land,
de appellat. 1. which *Gavelkynd* denotes, and which cannot be inten-
tiores. parag
Curatores. de ded of any land holden in Demesne, and not in ser-
admin. tue. vice, ceaseth, and is quite extinguished, there being
required

required to make the land *censual*, a censal Tenant, one that holdeth by censal services, such as there is none (especially in the Kings case) when once the land is come home again, reduced to its first principles, and re-united to (what, like *Fief*, is opposed to service-land) the Lords *In-land*, or Demesne-land, (as in the case of a common Lord) or to the Crown, (i) *aliquo omnia feu-*
dam mouentur & oriuntur, the Fountain whence all Ten-
nures are derived, (as in the Kings case) from whence
by the letting it out in *Gavelkyne*, it was formerly se-
vered. To this purpose see *Petri Gregorii Tholosan-*
Syntag. Jur. univers. lib. 6. cap. 5. num. 11. But of
this also hitherto, for I hasten to an end.

PROPOSITION V.

Whether before the Statute of Wills (32.
and 34. H.8.) Gavelkynd-land in Kent
were deviseable, or not.

N answer whereof, holding with those which resolve it in the negative, howbeit (for my part) not *studio parvum*, but *veritas amore*, I shall oppose to such as hold the contrary, what arguments are brought against them and their opinion, in a case of Mr. *Halls* of Kent, *verbatim*, as I find them published in print, which here follow, with their title:

Reasons

~~Records and authorities to prove that Gavelkind-lands in Kent, are not, nor were anciently deviseable by Custome.~~

' First it is a rule in Law, that an Assize of *Mordan-*
 ' *cester* doth not lie of lands which are deviseable
 ' by Testament, &c. and this appears by divers books,
 ' as namely, 4. Edw. 2. *Mordanç. 39. 22. Assiz. 78.*
 ' and *Fitz. Nat. Breuium 196. 1.* But it appears by
 ' *Bratton*, fol. 276. b. that an Assize of *Mordan-*
 ' *cester* will lie of *Gavelkind* lands in *Kent*, and so it appears
 ' by divers ancient Records, quod vide in *Itinere Joha-*
 ' *nus de Borwick*, &c. Anno 21. Edw. 1. Copia. fol.
 ' 1, 7, 20, 24. &c in *Itinere H. de Stanton*. Anno 6.
 ' Edw. 2. Copia. fol. 1, 8, 9, 10, 13. By which it ap-
 ' pears plainly, that an Assize of *Mordan-*
 ' *cester* lies of *Gavelkind* lands in *Kent*.

' But an Assize of *Mordan-**cester* doth not lie of lands
 ' within the city of *Canterbury*, because lands are there
 ' deviseable by Custome, as it appears in dicto *Itinere*
 ' *H. de Stanton*, fol. 3, 4, 6. And it is evident, that in
 ' the city of *Canterbury*, (which was anciently part of
 ' the county of *Kent*) there was a special custome used
 ' to devise lands, lying within the liberties of the city,
 ' and to prove their wils in the Court of *Burgmote* in
 ' the same city. But there needed no such Custome, if
 ' all the *Gavelkind* lands in *Kent* had been devise-
 ' able, &c.

' Also the most part of the ancient Wills of *Gavel-*
 ' *kind* lands in *Kent*, before the Statute of *Uses* did
 ' mention Feoffees of the lands devised, &c. as appears
 ' by

by the Register-books of Wills, at Canterbury, and at Rochester, whereby it doth appear, that Deviseurs were Cestay que uses, and not owners of the land devised, and although some wills of land make no mention of Feoffees, yet there were Feoffees of the same land, as will appear by the deeds of Feoffment thereof, and twenty to one do mention Feoffees, &c.

Also Sir John Fineux chief Justice de R. B. Sir Robert Read chief Justice de C. B. and Sir John Butler, Justice, &c. devise their lands in Kent before the Statute of Uses, and make mention of Feoffees, &c. which had there been a Custome to devise, no question they had taken of it, &c.

Also many ancient deeds of Feoffment of lands in Kent refer to Wills, sc. Dedi, concessis, &c. A. B. omnia terras & tenementa, &c. ad opus & usum perimplendi ultimam voluntatem meam, &c.

Also there are wills to be found of lands in diverse other Counties of this Realm, whereby lands were devised before the Statute of Uses, and no mention made of any Feoffees, as appears in the Register-books of the Prerogative Court, and in diverse other places, and yet without doubt they had Feoffees seized to their uses, &c. or else they could not there devise the same.

Also the houses and lands in Cities and Burroughs, which were deviseable by Custome, were reckoned inter casalla sua, but it were strange that all the So-cage Lands in Kent (which are conceived to be Gavelkind) should be reckoned inter casalla, &c.

And in the Register, fol. 344. there are fourteen several Writs of Ex gravi querela, and none of them makes

make mention of any County, &c. nor of Gavelkind
 burgo, ~~etiam~~ consuetudinem Civitatis, or secundum
 consuetudinem Burgi, &c. And if Gavelkind Lands
 be deviseable by Custome, &c. the Devisee can have
 no Writ of *Ex gravi querela*, because there is none be-
 fore whom the Action or writ should be brought, &c.

Also Mr. Lambard in his *Perambulation*, writing of
 the Customes of Kent, maketh no mention of any
 Custome to devise lands: nor the Treatise called
Consuetudines Cantie in the old *Mag. Charta*, fol. 147.
 which (without doubt) they would not have omitted,
 if there had been any such Custome, &c.

Also between the Statutes of 27. H.8. of Usages, and
 the Statutes of 32. of H.8. of Wills, there were very
 few Wills made of lands, as appeareth by the Regis-
 ter-books before mentioned, and the most of such
 Wills as were then made (being but few in number)
 do make mention of Feoffees.

Also the common practice ever since the Statutes
 of Wills hath been such, that if a Will be made void
 for a third part, by a Tenure in Capite of part of the
 land &c. that third part shall descend to the Heir, and
 the Devisee shall not have it; and this appears by
 special Liveries in the Court of Wards proving the
 same; and by diverse witnesses that can prove the
 same to be so, &c.

And in Sanders case of Maidstone, in Anno 9. Fa-
 cobi Regis, all the lands were devised by Will, and af-
 ter the Will was avoided for a third part, by reason
 of a Tenure in capite of a small part of the land, and
 the third part of all the residue of the lands, being
 Gavelkind, did escheat to the King for want of Heir,
 which

which land is ever since enjoyed under the Kings title by escheat. And John Wall upon a trial recovered against White the Devisee.

Whereby it is evident that *Gavelkind* Lands in Kent were never deviseable by Custome, and so it was agreed *per curiam Pacific.* 37. El. in C. B. in Halton and Starthops case, upon evidence to a Jury of Kent, & it was then said, that it had been so resolved before, and there it was said *per curiam* that *Fitz. Nat. Brew. 198. l.* is to be understood where there is a special custome, that the Land is deviseable, &c.

And he that shall conclude upon that place of *Fitz. Nat. Brew. 198. l.* that all *Gavelkind* Land is deviseable, &c. may as well conclude, that all Lands in every City and Burrough in England is deviseable, which is not so, as appeareth by Mr. Littleton, who saith that in some Burroughs by custome a man may devise his Lands, &c.

And if *Gavelkind* Lands were deviseable by custome, &c. Then a man may devise them by word without writing, as it is agreed in 34. H. 8. Dyer. 53. for a man may devise his Goods and Chattels by a Will *Nuncupative*, so may he likewise devise his Lands deviseable by custome, because they were esteemed but *sanguine catalba*, &c. and it would be a mischievous thing, if all the *Gavelkind* in Kent should be deviseable by word onely.

To these arguments and objections against the custome, certain answers and exceptions by the learned Counsel of the adverse party have been framed and returned in behalf thereof, reducible to three heads: which (to avoid all just suspicion of partiality and

prejudice wherewith some zealous advocates and contenders for the custome have been, and may again be, ready to asperse me) I shall here subjoyn; together with such answers and arguments (by way of reply) as I have received from the learned Counsel of the other side, in further and fuller refutation of theirs who endeavour to uphold the custome.

*The learned Counsels arguments in behalf
of the Custome.*

'First, they deny the old book of *4. Edw. 2. Fitzb.*
'*Mortdancaster* 39. 10. to be Law. But an Affise of
'*Mortdancaster* lies of land deviseable, if it be true that
'his Ancestour died seized, unless it appears that the
'Defendant claims by some other title. But if the De-
'fendant plead that the land is by custome deviseable,
'and was devised unto him, it is a good barr of the
'action.

'Secondly, They rely much upon the book of
'*Fitzherb. Natura Brvium*, fol. 198. which sayes, that
'a Writ of *Ex gravi querela* lies where a man is seised
'of lands or tenements in any City or Burrough, or in
'*Gavelkynas*, which lands are deviseable by will time
'out of mind, &c. whence they inferr that all *Gavel-*
'*kynd-lands* are deviseable by custome.

'Thirdly, They cite the Treatise called *Confuetudines Cantie*, in the book called old *Magna Charta*,
'and *Lumbards Perambulation of Kent*, fol. 198. that
'lands in *Gavelkynd* may be given or sold without the
'Lords licence, and they interpret the word given, to
'be by will; and the word grant, to be by deed.

The

The Reply to the fore-going Arguments, by such as stand in opposition to the Custome.

To the first Objection against the Argument taken from the Assise of Mortdancaster, they reply thus:

First, they maintain, that the Custome alone, without an actual Devise is pleadable in abatement to an Assise of Mortdancaster, as well as the Custome with an actual Devise is pleadable in barr: for which there is not only that book of 4. Edw. 2. but also *Bracton*, lib. 1. fol. 272. *Ubi non jacet Assisa mortis antecessoris*, among his pleas in abatement of the Writ, (having before treated of pleas in barr to it.) *Cadit Assisa* (says he) *propera consuetudinem loci, ut in Civesatis- bus, Burgo, &c. and 32. Assis. pl. 78.* where upon the like plea the Writ was abated: and *Fitzherb. Nat. Brev. fol. 196. l.* (whose authority they think strange to be denied in a matter of Law, wherein he was a Judge, and yet so strongly relied on, in a matter of fact and custome, in a place whereto he was a stranger:) and so was it practised and allowed in *Iust. Fe- ban. de Stanton, 6. Edw. 2.*

And the reason given by the book, why such a custome is pleadable in abatement to this Writ, is because the suggestion of the Writ may be true, that the Ancestour died seised, &c. and yet the heir have no title where the lands are deviseable. And it is the property of this Writ, that the dying seised must be traversed; and though the Tenant plead the Feoffment of the Ancestour, or other matter in barr, (that

'is not matter of *Estoppeſſe* to the heir, as a Fine, Recou-
'very, &c.) yet must he traverse the dying feised; and
'the Jury ſhall be summoned and charged to inquire,
'if the Anceſtour die quo oblitis ſeisitus fuit, &c. and ſo
'are the books of 9. Assis. pl.22. 27. Hen.8. 12. *Brooke*
'*Mordanceſtor*. 1. Old Nat. Brev. fol.117. and diuerſe
'others. Nor is there any opinion to be found in any
'book of Law againſt that book of *Fitzherb. Mord-*
'*danceſtor*, 39. until the 15th of King Charles, *Lawn-*
'*der and Brookes caſe, Crooke*, lib.1. fol.405. obiter, up-
'on the trial of this cuſtome.

2. 'Admit that at this day the Law is held to be
'otherwife, yet it appears by all the authorities a-
'foreſaid, that in those times the Law was taken
'to be, that the *Mordanceſtor* did not lie where
'there was ſuch a cuſtome: but it was a good plea
'in abatement of the writ. And yet Aſſiſes of
'*Mordanceſtor* were then frequently brought and
'maintained of lands in *Kent*, as appears by *Bra-*
'*ton*, and the books abovesaid.

3. 'Whether the cuſtome alone be pleadable in a-
'batement; or the cuſtome with an actual deviſe
'be to be pleaded in barr, they ſay it cannot be
'ſhewn (if it can they challenge them to do it, who
'would maintain the cuſtome) that it was ever
'pleaded one way or other, either in abatement,
'or in barr, to any one of all that multitude of Aſ-
'ſiſes of *Mordanceſtor* brought at large in that
'Country, when in ſo ſmall a City and County as
'*Canterbury* (where indeed there is ſuch a cuſtom)
'they ſhew it often pleaded to writs of *Mordance-*
'*ſtor* brought there before *Roger de Stanton* and
'other Justices in Eyre.

'Secondly,

Secondly, To the book of *Fitzherb. Nat. Brev. fol.*
 198. upon the writ of *Ex gravi querela* (from whence
 the ground of this question sprung) they answer, that
 the fence and meaning of that book (no lesse than
 the Grammar of it duly observed) is no more, then
 that the writ of *Ex gravi querela* lies there where lands
 in any City or Town, or in *Gavelkynd*, are devisable
 by custome. Not that all lands in Cities, and Bur-
 roughs, and in *Gavelkynd*, are devisable by custome.
 So that the mistake ariseth by making that a catego-
 rical, which is but an hypothetical proposition: and
 serves rather to ground an argument against the cu-
 stome. For if the writ of *Ex gravi querela* does lie
 there, where there is such a custome; then (*a contrar-
 ius*) it may well be argued, that where a writ does not
 lie, there is no such custome: and it cannot be said to
 lie there (for *Fitzherbers* speaks of places:) where it
 was never brought.

They say further, that this writ of *Ex gravi querela*
 is a formed writ in the Register, appointed by Law
 as the proper remedy of the Devisee, where such a
 custome is: and that therefore it hath been required
 by the Judges, as a necessary proof of such a custom,
 that it be shewen that this writ hath been used to be
 brought there, where such a custome is alleged to be,
 40. Assis. pl. 41. and the opinion of *Knivet*, 39. Assis.
Brooke, Devise 43. In like manner, as to prove a cu-
 stome of intailing Copy-hold-lands, it must be shewen
 that plaints in the nature of *Formedons* have used to
 be entered. (*Heydons* case in the third Report.) But
 they say that for proof of this custome in *Kent*, there
 is not only (of 14. in the Register, which all con-
 clude,

' clude, secundum consuetudinem Burgi, or Civitatis)
' not one precedent of any such writ for Kent: but that
' it cannot be shewen that ever any writ of *Ex gravi*
' *querela* was brought for any lands in the county at
' large, out of some City or Town. And it is a questi-
' on to whom such writ at large shall be directed, there
' being no form at all in the Register of the direction
' of any such writ at large, the form there to a City or
' Burrough being either *Majori Civitatis*, or *Burgi*, &c.
' They say it could not be, but that question must
' have arisen, (if not of the custome) whether a will or
' no will: for the trial of which there was scarce any
' other course (at least, none more ready) before the
' course of Ejectments grew to be the practice, then
' either for the Devisee to bring this writ of *Ex gravi*
' *querela* against the heir being in possession, or for the
' heir being ousted by colour of a will to bring his
' *Mortdancestor*. And therefore they think it not cre-
' dible that (if such a custome were, and so extensive
' as to the whole county of *Kent*) there should be no
' Record, (if there be, they again challenge the other
' side to shew it;) whether any Devisee either brought
' this writ, or pleaded this custome, (and pleaded it
' must be, as themselves acknowledge, and is resolved
' in *Lannder* and *Brookes case*:) for any lands within
' the county of *Kent* out of some City or Burroughs:
' when as they are confident to say, that there is not
' any custome used in *Kent*, and that extends through
' the whole country, but Records may be shewen where
' it hath at some time been judicially pleaded and al-
' lowed.

' They add, that Customes, being special Laws, are
' sued

fused to the place where they are used ; and that this
is a custome very proper and suitable in Cities and
Burroughs, among Merchants and Tradesmen, that
they might dispose of their houses together with
their personal estates : and that the pleading of this
custome in all Writs and Records is, that they are *le-*
gablia, tanquam bona & catalla. And therefore by
the books of 40. Assis. p. 41 and Cokes 1. Instit. 110.
it is held that this custome cannot be alleged in any
upland Town. Then how improper is it that all the
estates in so great a county should be of no other na-
ture (in this respect) than goods and chattels, and lia-
ble to be disposed and carried away by words catch-
from dying men ? which (they say) may serve too
for an argument against the pretended benefit and uti-
lity of this custome, especially when the multitude
of controversies, arising upon wills, have made it a
question, whether it had not been better the Statutes,
of 32. and 34. Hen. 8. of wills, had never been made.

And therefore (they say) that in *Wylde's case*, in the
6th Report, which was resolved by all the Judges of
England, it is said expressly (and no doubt upon good
consideration) that at the Common Law, lands were
not deviseable but by custome only in Cities and
Burroughs, *Houses and such small things.* And in *Mat-*
thew Menes case, in the 9th Report, where the will
was of *Gavelkind*-lands in *Kent*, and a house holden
in Capite, it is all along held, that the will there was
enabled by the Statute, and puts a case of lands in
London deviseable by custome, as a stronger case,
which certainly it were not, if lands in *Kent* were so
deviseable.

The third objection from the words (*dener et ven-*
der) they say, deserves no answer more than this, that
 the same words are used, that the Infant may *dener* or
vender, give or sell, his estate at the age of fifteen, and
 that no man will say, that he may at that age make a
will.

Thus have you the learned Counsels arguments
 (faithfully exhibited) both for and against the custom
 of devising *Gavelkynd-land* in Kent, before the Sta-
 tutes of 32. and 34. Hen. 8. concerning the devising of
 lands by will. Treading (as I said) in the steps of thole
 who oppose the custome, give me leave, by the way of
 Corollary, to add somewhat, haply not improper to
 be hinted and insisted on in this argument. Besides

(a) *Glanvil*, lib. 7. cap. 1. &
Braffton, fol. 18. b. fol. 49. a.
 fol. 27. a. fol. 407. b. fol. 409.
B. Euston with others cited
 by Dr. *Cowell* lib. 2. tir. 20. nu v. 7.
Lixwoods Provincial. de
 Testam. c. *Statutum*, parag.
 vies. legare possunt.

(b) *Braff*. lib. 2. cap. 19. lib. 4. tract. 3. cap. 9. num. 3. *Civiles de Feudis*. lib. 1. tit. 3. & lib. 4. tit. 19. (c) *Lib. 1. tir. 8.* de success. feud. & *Vulpius* lib. 1. cap. 9. num. 70. (d) *Hofman* upon that place of the Feuds. (e) *Lamb. Peramb.* pag. 528. & *Spira. Glossar. Verb. Gav-*
elkyn.

ubanimous

unanimous vote, referring to the Germans, vouch for it that, amongst other of their Customes published by Tacitus : *Hæc des successoresque sui cinq̄ liberi, & nullum testamentum*: a passage, or authority, equally insisted on by the Feudists to warrant their (f) *Nulla ordinatio defuncti in feudo manente viri valente*, prohibiting the disposal of Peeby will, and of our municipal Lawyers and others, as for the like, to withhold to illustrate the original of our (g) *Gavelkind*.

(f) *Feud. lib. t.
ut 8. de sue-
cess. feud &
Hotoman. bid.*

(g) *Lamb. &
Spelm. ubi
supra.*

But that which in this case (as to matter of fact) very much, if not most of all, works with me, (what it may with others I know not) and induceth me to an utter dis-belief and rejection of this Custome, is certain passages & clauses in several wils extant & to be found in our Registers at Canterbury, and in that at Rochester, intervening and happening in the interim of those two Statutes ; the one of *Us/Es*, made anno 27. the other, of *Wills*, intitld anno 32. *Hen.8.* (a time most proper for the Custome, if any such in being, by its fruits, the immediate free devile of lands by will, at pleasure, without that mediate, collateral and by-way, that *periphrasis*, of Feoffments and their Utles, which now was out of doors ; to assert and shew it self :) all which (in my opinion) do plainly tend to the dis-proof of this custome of devising lands in Kent by will, before that Statute of wills. As for example.

1. In the will of *Thomas Bourne* of Tenterden, dated 3. May 1538. in the Archdeacons Registry at Canterbury, lib. 21. quatern. 7. And where (saith he) there is an Act lately made so avadus of wills, yet my mind is that Clement my son shall have my house and shop in Tenterden with all appurtenances to him in fee. And

that John Bourne my son shall have all my lands lying in the parish of Hawkbeck to him and his heirs in fee. And I give to my said son John xl. s. upon condition that he will abide and stand to the dividing and order of my lands, as my mind is before expressed. And if he will not stand to, and abide the said order and division, but to shift his part throwly, then I will the said xl. s. shall remain and be had to Alice my wife. Also I give to Clement my son iij. l. upon condition that he do stand to and abide the division and order of my lands and tenements, according as my mind is before expressed. And if the said Clement do refuse my said order and division of my lands, and shifts his part throwly, then I will the said iij. l. shall remain and be had to Alice my wife, &c.

Argument.

Had there been a Custome for devising lands by will, what needed that notice to be taken here of the Act for avoiding uses of wills? And why is the Testator put to it thus, to work and wage his sons to consent to that partition and division of his lands, by a Legacie in money to be forfeited upon their refusal, and for choosing to shift or divide throughly, as a thing in their power by Law, which could not be, had there been any such Custome.

In Thomas Soyer, alias Lambards will of Faversham, dated in May 1538. in the same Registry and Book, quatern. 9. some lands are devised away from the two female Inheritrices, to be sold and a partition also made between them of other lands. Whereupon

upon a Legacie in money is given to the heirs at Law, to wage them to consent and condescend to that devise and division, in these words:

Item, I will and bequeath to Isabel and Margaret my two daughters, to each of them 6. l. 13. s. 4. d. to be paid to them by Benet my wife in money, or money-worth, in four years next after my decease, upon condition that my said two daughters, their Heirs and their Assigns, so suffer this my present will and testament to take effect, according as I before have willed. And if my said two daughters, their Heirs and their Assigns do thus refuse, that my said will can take none effect, according as I before have willed, then I will my said two daughters, nor their Assigns, shall take no benefit nor profit of none of my bequests to them before bequeathed, &c.

Arguments.

The same Quare here as before, viz. What needed this conditional Legacie in money, had it not been free to them and in their power and choice, whether his will (for the sale of some land, and for the division of other) should take effect, or not?

3. In John Crommers will of Fogylston Esquire, dated in February 1538, in the same Registry, book, and quatern, this clause to our purpose is remarkable.

Item I will that each of my three daughters, Benet, Elizabeth and Grace, have 13. l. 6. s. 8. d. of such debts as their husbands do owe me: so that their husbands be constrained to sell lands, as I have purchased, ga according to my devise and will, or else not, &c.

Argument

Argument.

The like *Quarre* here as before. Where also notes that although he mention a devise of lands by will; yet no such will is either proved or registered, because (probably) null and void in Law. The like whereof may be supposed of *Sparcklins* will of *Tbanes*, dated in March 1539. in the same book and Registry, quatern 14. where his mansion place at *Bronston* is said to be bequeathed to his son *John*: whereas no such thing appeareth by the approved will; nor is any land at all devised by it. The like may be said of *Catherine*s will of *Norborne*, dated anno 1537. in the same Registry and book, quatern. 8. where some Legacies in money are charged upon a house there said to be given to the party charged and his wife, whereas no such gift appeareth by the will.

4. In *Sarlys* will, dated anno 30. Hen. 8. in the same Registry and book, quatern. 11. where he maketh mention of his three daughters, we have this clause:

Item, I will that he (my brother) shall have my part of my house at Wy, called Jancocke, during his life, if that may be suffered by the Law, &c.

5. In the will of *William Byx* of *Linsted*, dated 1538. in the same Registry, lib. 22. quatern. 1. occurs this passage:

I will and bequeath all the profits, commodities, fermes, rents, of all my lands whatsoever, &c. unto my brother germane, Laurence Byx, unto the times that my sons, Laurence and Nicholas come to the age of 22. years, &c. Also to my daughters marriage 10. l. to be raised out of those

those profits, &c. and paid by my brother Laurence, Provided always, if the Law will not suffer nor admit my brother Laurence to enjoy and take up the fermes, &c. of my lands, then I will that each of my said sons, &c. shall pay the said 10. l. unto my said daughters marriage, &c.

6. Thomas Hunt of Pluckley in his will, dated in the year (no moneth) 1540. (probably some time before the Statute of Wills that year made) in the same Registry, book and quatern. gives to his wife the issues of his lands for life, and after her death the lands themselves to his son John, charged with some Legacies in money to his younger brother Anthony and his children: but with this Proviso:

If thus my will (saith he) stand not good and effectuall in the Law, then I will that my said messuage and premises after the death of my said wife shall remaine to my said two sons A. and K. and to their heirs for ever, &c.

7. The like clause to this occurs in the will of John Hubberd of Westerham, dated the 23th of July 1537. in the Bishop of Rochester's Registry: viz.

Also if it do please God to visit my wife and all my children with death, then I will that Richard Hubbard, the son of William Hubbard of Lynsfield shall have my house and all my lands if that the Law will suffer it: paying therefore to everyone of my sisters, Agnes, Katherine and Margaret, three pounds six shillings and eight pence, to be paid within the space of two years next after my decease.

8. Nor is this passage less pregnant and pertinent to our purpose, taken from the will of John Stace of Leigh, dated the 18th of March 1538. in the same Registry.

And also I will that if the Kings late Act in Parliament

ment will not stand with my wife to enjoy the one half of
my lands, I will then that mine Execution shall pay yearly
to Agnes my wife xl. s. during the term of her life, and
that to be paid quarterly at the four usual terms by equal
portions, &c.

Argument.

In these five last wills mentioned (*Sarlys, Byx, Hunt,*
Hubbird and Staces) what means that doubt and
question in the Testators, whether their devises (of
houles and lands) were good, or would hold and
stand firm in Law, had there been such a Custome,
and had not the Law been clear otherwise in this
case, as well in *Kem* as elsewhere?

I observe also, that in the interim of 27. and 32. H.8.
some few (and indeed but very few) wills there are in
the Registers at *Canterbury*, wherein lands are devised:
some with Feoffment, and some without, at least with-
out mention made of any. As for the former, those
with Feoffment, I find the most of them dated, though
in or after the year 27. yet before the sixth of May 32.
year of that King, until when the A&C was not to come
in force. Besides, happily the Feoffment was made be-
fore the Statute, and so could not be revoked (as I con-
ceive) without the Feoffee's consent. As for the rest
(those without mention of Feoffees) some of them
were of our City (*Canterbury*) or the like places, where
by particular Custome they might devise. Others
(happily) had Feoffments, although not mentioned.
If not, they were no other (I conceive) than wills *de
facto*, or *de bono ipsis*, made: nor did or could otherwise,

or further operate, inure, or take effect than the interested or concerned parties should give way: with whom in those elder times (times of more and greater regard and reverence to the will of the dead than the present) the dying parent, or kinsmans mind declared in his will, bare so great a sway, and did so much prevail, as to perswade with them to renounce an advantage to themselves, for the fulfilling of the deceaseds solemne and declared mind. Besides, it follows not, that because such wills and devises are found, therefore they passed and were allowed of as good and effectuall: the contrary whereof is more than probable by the *ifs* and *conditions* found in other wills of those times, arguing plainly the Testators distrust and doubt of the validity, and consequently of the succeſſe and effect of his devise, whereof examples are laid down before.

Before I close and wind up all, I have onely this to add, by way of offer, from the party opponent to this Custome, and his Council, (which, as a matter much considerable, I may not pretermitt:) that, whereas that abundance of wills wherein lands are devised without mention of Feoffees, found and produced from the Registries both of *Canterbury* and *Rochester*, is much insisted on in behalf of the Custome: it from the Registries of any other Diocesse but of *Kens*, (where such devises never did, nor could obtain, until the Statute of Wills) of equal circuit and extent to either of these, the very same thing may not as truly be observed, and a proportionable number and quantity of such kind of wills, (wills of lands devised without mention of Feoffees)

(ees) cannot be produced, and consequently the argument and inference thence drawn (for the Custome) eluded and avoided, they will sit downe convinced, and with their adversaries subscribe unto that argument. An offer (this) in my judgement so fair, ingenuous and plausible, as not to be rejected of any, but such as out of a cavilling spirit, are resolved to turne the deaf ear upon all fair and equall proposals; that I say not, such as, for maintenance sake, make it their Study, *quæcumque modo*, to maintain their spurious interest. But that I may not seem to be (what indeed I am far from being, any otherwise than in truths behalf), a partisan to this busynesse, I shall forbear all further censure, and if I may but have the Readers leaue to make my Epilogue, I shall, with thanks to him for that, and the favour of all his other patience, quit the stage of my discourse on this whole argument, and make my *Exit*.

Peroratio.

Many other things offer themselves to his discourse, that would treat of Gavelkind to the full; but they are (I take it) mostly points of Common Law, which because they are not only out of my profession, but besides my intention too, which was to handle it chiefly in the historical part, and that no further than might conduce to the discovery of the *Præmatria*, or beginnings of it, I will not wade or engage any further in the argument, lest I be justly censured of a mind so obstinate as to thrust my sickle into another mans harveste; only (to a close) craving leave to supply the common Kentish Custome, at the end of Mr. Lambards Penambulation, with one clause, which, according to an ancient copy registered in a quondam book of St. Augustines Abbey

at

A clause wanting in the
Printed Kentish
Custume supplied.

at Canterbury, now remaining with my very noble and learned friend Sir Roger Twysden, is to come in at pag. 574 lin. 2, after these words: *Qui de lay est enu
sans men, viz.* (as that old copy goes on these;) *E si
homo ou femme fust felon de fet m'fines q' il sey mes mes
de gre se oye, le Roy aura les chartez tuts & viens l'an
ne le waist, mes le heir fust tausost enherite sans contredit,
k'z tout fust il felon de sey mesmes, il neyt my atteint de
felony. Et clayment aussi, &c.* as it follows in that printed Custumal. Which clause, as I conceive, may be thus Englished: *And if a man or woman shall be a
Felon of him or her self, who shall kill him or her self of
his or her own accord, the King shall have all the Chas-
tells, and not the year and a day, but the Heir shall
immediately inherit whereof he or she dies: for albest he
or she be a Felon of his or her self, he or she is not attain-
ed of Felony.*

Now craving patience, I have taken to deliver my sense, and to conclude, on severall occasions here emergent, with here cut the thred of this Discourse, wishing that as I have not spared freely to speak my mind, so that every man that pleaseth, should assume the like liberty, not suspecting me so opinionate of mine own vote, as to wish, much lesse to beg, least of all to importune any unwilling mans concurrence, though haply unprovided of a better of his own, disclaiming that magisterial boldnesse of him arrogated, that said once upon a like occasion:

*— si quid novissi rectius istis
Candidus impensis, si non, his nunc mecum.*

And (to wind up all) wish every man, in what he stands in doubt of, to be his own *Oedipus*.

Guid. de pont.
lib. 3. El. 9.

*Da veniam scriptis: quorum non gloria nobis.
Causa; sed utilitas, officiumque fuit.*





An APPENDIX OF Such Muniments (viz. Charters, and other Escripts) as are quoted in the precedent Discourse, with refe- rence to this place for transcription.

Gharta pervetusta de terrâ ad Censum Vide pag. 50.
concessâ.

Rnulfus Prior, & tota Congrega- Scriptura r. 1
tio Ecclesiae Christi, omnibus fi-
delibus & amicis suis salutem.

Sciais nos, consentiente Archi- (a) This (it
seems) was
before he
granted them
liberam dispo-
sitionem rerum
suarum, when
of in Eadmer.
Hist. Novor.
piscopo (a) Anselmo, concessisse Calvello &
heredibus suis extra civitatem circa castel-
lum, novem partes terræ, inter terram ara-
bilem & prata, eà conventione ut ipse Cal-
vellus & heredes sui singulis annis dent pag. 108.

Celarario

J. Forista.
Curia.

Calverario h[ab]ij. sol. pro omni re p[ro]pter tres
f[ac]tis facturos, id est, m[on]strum, & furtum,
si ipse Calvellus vel heredes sui fecerint,
& pr[et]er si vicecundum ipso sive heredes
sui fecerint monachis Ecclesie vel servien-
tibus eorum. Horum vero denarior. una
medietas dabuntur in mediâ Quadragesima, &
altero in festo S. Michaelis. Calvello autem
mortuo, pro redēptione quam heredes fa-
cere solent, heredes sua xx. sol. dabunt, &
Censum quem pater prius dederat, ipse de-
inceps similiter dabunt. Testes horum sunt
Folbertus de Cill, Will. Folet, Rogerius
filius Herengodi, Robertus de Mala villa.

[Note that this Charter hath a seal appendant on a lo-
b[el]-proceeding from the side-margins round, and
about the bignesse of a five shillings pecece of silver,
the wax yellow, stamped, but on the one side with
the form of a Church, much like that in the old seal
of St. Augustins, in Sir Henry Spelman's Councill,
page 102. The inscription is the ring of it this]

+ SIGILLVM ECCL[esi]AE CRISTI.

Charta

Charta Prioris consimilis.

Wibertus Prior & Conventus Ecclesie
 Christi Cantuar. omnibus fidelibus suis, tam
 presentibus quam futuris Salutem. Sciat is
 nos concessisse Goldwardo filio Feringi ter-
 ram quae fuit Walteri de Sartrino servien-
 tis nostri, Matre uxoris sue, & item ter-
 ram quae fuit Mariz filiae Richardi aurifa-
 bri, sicut cum propria terra sua in qua Fe-
 ringus pater suus manebat, pro iiii. s. &
 iiii. d. & ob. quas nobis inde annuatim
 reddet ad duos terminos, ij. scil. solidi, &
 iiii. denar. & ob. ad med. Quadrages. &
 ij. s. ad festum S. Michaelis. Tenebit ita
 que predictus Goldwardus de nobis has ter-
 ras benc & in pace & honorifice jure bere-
 ditario per suprascriptum censum, & lice-
 bit ei de ipsis tanquam de propriis libere
 cere quod voluerit, salvo jure & redditu
 nostro. Ita nam quod se eas alieni dure
 voluerit vel. vendere, nobis prius hoc indi-
 cabit, & nos ad emendum eas (b) proximio-
 res esse debemus. Terra illa jacet iuxta mu-

Scriptura 2.
Vide pag. 50.

(b) Simile
habes in illo.
But gen apud
Scatob. capoz.

, rum Eleemosynarie nostrae. Testibus Bartholomæo Dapifero, Willmo Camerario, Geldewino & Johanne, Cocis; & multis aliis.

Alia Charta de terrâ ad Gablum concessâ.

Scriptura 3.
Vide pag. 50.

Robertus Monachus Ecclesiae S. Augustini, Custos & Procurator Hospitalis beati Laurentii, Omnibus Christi fidelibus Salutem. Sciatis me concessisse Hamoni textori & heredibus suis duas aeras terræ contra Sanctum Sepulchrum, pro duob. solidis de Gablo, singulis annis, jure hereditario tendas. Medietatem autem dabit in media Quadragesimæ, & medietatem alteram in ad Vincula S. Petri, & tres gallinas in virginilia Natalis Domini. Valeat. Testibus Alurico presbytero, Lidulfo, Willmo textore, & fratribus illius loci.

Charta de terrâ ad Gavlikendam concessâ.

Scriptura 4.
Vide pag. 38.
2. 33.

Soiant presentes et futuri quod ego R.
Des

De gratiâ S. Augustini Cantuar. et ejusdem loci Conventus deditus Jordano de Stokes et heredibus suis ad Gavelikendam, Gavelikendam
 xl. aeras de marisco nostro pertinente ad manerium nostrum de Cillelet, cum pertinentiis suis, Tenend, de nobis jure hereditario in perpetuum, Reddendo inde nobis annuatim viij. solid. et vij. denarios sterlingorum ad Curiam de Cillelet, in duobus terminis anni, in Nativitate Domini iij. s. et ix. d. et in Nativitate Johan. Baptista iij. s. et ix. d. Et pro hac concessione dedit nobis prædictus Jordanus C. s. sterling. de Gersume. Ut igitur ista donatio stabilis et firma permaneat sigilli nostri munimine eam roboravimus. His testibus Henrico de Cobbeham, Galfrido de Stokes, Stephano de Marisco, Philippo de Fuerport, Codefrido del Pac, Bricio del Pac, Waltero filio Roberti, Gilberto fratre Abbatis, Willmo Pincerna, Wido Janitore, W. Coco, Alex. Hostiario, et multis aliis.

Aa

Apo-

Dicitur quod Burga & Abbatia Cenobium

**Apographum processus litis inter Burgam
de Bending, & Priorem & Conventum
Ecclesie Cantuar.**

Scriptura s.
Vide pg. 51.

De toto manerio de Wellis coram W. de
Ebor, R. de Turkey, G. de Preston, &
sociis suis itinerantibus apud Cantuar.
3. Id. Junij, Anno Domini 1241. R. H.
filii R. Johannis 25.

Burga quæ fuit uxor Petri de Bending
petit versus Priorem S. Trinitatis Cantuar.
Francis Ban-
mediariatem manerii de Wellis sicut Fran-
cum Bancum suum, ad faciendum firmam
xviii. dierum, et nnde predictus Petrus
quondam vir fidelis eam dolarunt, &c. Et
Prior, scilicet Rogerus de Litt. venit et dicit
quod habet manerium illud ex dono præde-
cessorum Domini Regis, qui illud man-
erium aliquando teneterunt. Et quod illud
manerium dederunt Deo et ecclesie S. Tri-
nitatis adeo liberè sicut manerium illud te-
nuerunt in puram at perpetuam eleemosy-
nam; ita quod illud manerium nunquam
postea:

Apparatus

179

postea partitum fuit, nec est partibile. En-
dicit quod Dominus Rex que manerium ih-
Ind dedit predecessoribus suis, non tenet
illud nomine Gavelkinde. Et contra Burgæ ^{Gavelkinde.}
dicit, quod predictum manerium est Gavel-
kinde, et partibile, ita quod quidam Robert-
tus de Claloignies, Dominus de Sulton, qui
duxerat in uxorem Matildam de Welles,
cujus hereditas illud manerium fuit post
mortem illius Matildis, habuit nomine
Franci Banci, medietatem illius manerii, et
Petrus vir illius Burgæ habuit medietatem
illam ex dono Hervei Bellet consanguinei
ipsius Burgæ, postquam idem Petrus despon-
savit ipsam Burgam, qui quidem Herveus
redemit medietatem illam per denarios suos
de praedicto Roberto, ad opus ipsum Petri
ac Burgæ. Et quod ita sit offert Domino
Regi xx. s. per sic quod inquiratur per pa-
triam. Et Prior dicit quod predictum ma-
nerium non est Gaulikend, neque partibile,
nec predictus Robertus unquam habuit
ibidem medietatem predicti manerii ut de
Franco Banco suo. Et quod ita sit ponit se
super patriam. Et ideo fuit inde, &c. Ju-
ratores

Justiciorum.

Vered. sum.

Iudicium.

natores suis. R. de Bettanni, I. de Celing, S. de Cris, G. de Dene, W. de Otridomini, A. Perot, E. de Boston, S. de Paule, B. de Badesmere. R. de Chilham, et Alanus de Leghes, dicunt super sacramentum suum, quod prædictum manerium fuit quondam manerium Domini Regis. Et quod datum fuit Deo et Ecclesie S. Trinitatis in liberam, puram et perpetuam elemosynam. Ita quod manerium illud nunquam fuit Gavilikende, nec partitum, nec est partibile, nec prædictus Robertus nunquam habuit medietatem prædicti manerii nomine Franci Banci. Set dicunt quod post mortem prædicti Matildis, tenuit prædictus Robertus totum manerium illud simul cum custodia prædicti Petri. Ita quod prædictus Herveus dedit quandam sumam pecuniae prædicto Roberto pro custodia illâ. Et ideo consideratum est, &c. quod Prior teneat, &c. & sine die, & prædicta Burga in misericordia.

Carta de terrâ ad Gavilikende concessâ.

Scriptura 6.
Vide pag. 38.
n.s.

Alanus Prior et Conventus ecclesie Christi

Cantuar.

App.
Cantemus Omnibus Christi fidelibus ad quos
litera ista pervenerint Salutem. Volumus
ad omnium noticiam pervenire quod nos
concessimus & assignavimus Theb. de
Emedford & heredibus suis quader viginti
acras d^r Dominio nostro in Nonthocholt, te-
nendas de nobis ad Gavelikende. Reddendo
inde nobis xx. s. singulis annis, x. in med.
Quadragesima & x. ad festum S. Michaelis.
Hanc tamen hac conditione ei tenebimus si
mansionim & domos suas super predictam
terram feceris. Debet insuper tam ipse
quam heredes sui sequi curiam nostram de
Dynton sicut ceteri homines de eadem
villa.

Charta pirori consimilis.

Alanus Prior et Conventus ecclesie Christi
Cantuarie Omnipotens Christi fidelibus Salu-
tem. Solatis quod nos concessimus & asseg-
navimus Stephano de Benardintone C. acras
de marisco nostro inter wallas Monachorum
Pontis Roberti, et Oxeniam, ita quodde-
bet habere illas C. acras post alias C. acras

qui in eadem munifico et mississimo Stephano
milita da S. Mariano, usque ad C. illas oras
quu n dimisiorius Solomoni de Gellinge. Con-
cessimus utrumque praedictas C. etiam eidem
Stephano de Regardumone. Et hys dibus suis
~~et~~ velicende ad Gabochymde. Reddendo inde nobis duos
marcos angeli singulis annis, ad duos, vix
terminos, infra octauas Nativitatis S. Jo-
hannis Baptiste ultam marcam, infra octa-
vas S. Michaelis alteram marcam, pro omni
servitio, nisi quod debet wallare secundum
quantitatem illius terre intus. Et extra, tam
contra salsam quam contra frescam, sicut
ceteri, et Curiam nostram sequi. Iurabitur
Cantuarien. ecclesiæ, et in hoc et in aliis,
quantum ipse potest cum ratione tueri et de-
fendere. Huc autem omnibus suorum mento cor-
poraliter in capitulo nostro præstito juravit
se fideliter obseruanturum. His testibus Go-
defrido cocco, Stephano portario, Bartholo-
mæo senschallo, Willmo de Capte, Roberto
Porter, et multis aliis. In eisque munifica
et misericordia, illius tempore ea quæra se
convenit ut **mainz** O te credo. **Alia**
etiam etiam quæra se.

133
alioz ab aliis distinxit. C. in uno apud
Alium alia Charta confirmata. id est. in aliis
vobis. vobis in aliis. vobis.

Omnibus ad quos præsens charta perire. Scriptura 8.
verit Gaufridus Prior & Conveniens ecclæ- Vide pag. 38.
sie Christi Cantuar. Salutem. Noverit uni- & 55.
versitas vestra nos concessisse Joni & here-
dibus suis Berbariam nostram ducentarum
ovium, scil. medietatem de Osmondseye in
terra & marisco cum una salina, Tenend.
de nobis successivè ad Gavelykende. Gavelykende.
& integrè sicut eam unquam Rogerus de
Osmondseye tenuit. Reddendo inde nobis
annuatim usq. s. de redditu ad duos termi-
nos, scil. ad festum S. Johannis Baptiste
xxviiiij. r. & ad festum S. Michaelis simi-
liter viginti octo. Post mortem vero predi-
ci Jonis dabunt nobis heredes sui successivè
de Rulario lvi. s. Dabunt etiam idem j. & Relevium;
heredes sui post ipsum nobis annuatim ad
Natali Domini unum Matblardum, et unam
Annatam, & quatuor cercellas, & ad Pa-
soha unum caseum, & unum agnum de Pre-
sent. Super hoc sciendum, quod predictus
Johannes de Sanc Garicam nostram de Leydun
sequentur.

sequuntur. & in auxilio dandis & Scottis
sicut alii Tenentes nostri sedebunt. Et
inde ipse & heredes sui successore salvos
plegios iuuenient de redditu terminis statu-
tis reddendo, & de Bereburia insulariue
integre & fideliter conservando.

Alia coassimilis Charta Hospitali data.

Scriptura 9.
Vide pag 38.
& 55.

Gavelkende. Sciant presentes & futuri, quod ego Radulfus Frone radidi & concessi Deo & fratribus Hospitalis S. Laurentii juxta Cantuariam, in orientali partis, septem acres terrae meae tenuendas in Gadelechende de me & heredibus meis libere & quiete. Reddendo inde annuatim mihi vel hereditibus meis xlj. denarios, pro omni servitio, & omni exactione in duobus terminis, scilicet in mcd. Quadragesima xxj. denar. & in festo S. Michaelis xxj. denar. Pradicta autem terra nominata est Preselleghes quia adiacet terra Helix de Blen. Pro hac donatione & confirmatione dederunt mibi predicatori fratres & heredibus meis quinque marcas sterlingorum. His testibus Johanne cle-

lico,

rico, filio Henrici Sacerdotis, &c. & pluri-
ribus de Halymot.

**Inquisitio de terris & tenementis quæ Isab-
ella de Monte alto tenuit de Priore ec-
clesiæ Christi Cantuarie.**

Inquisitio facta apud Pokynden coram Scriptura 10.
Vide pag 18.
Eschaetore Domini Regis die Mercurii prox.
ante festum S. Catherinæ virginis, anno
**R. R. Edwardi secundo, de terris & tene-
mentis quæ Isabella de monte alto tenuit de**
Priore Ecclesiæ Christi Cantuarie, & per
**quod servitiū, per sacramentū Willmi de Co-
keler, &c. qui dicunt per sacramentū suū, quod**
prædicta Isabella tenuit in Gavelikende die Gavelikende.
quo obiit de prædicto Priore unū messuagiuū,
xlij. acras terræ cum pertinentiis in Pokynden,
per servitium decem solid. undecim denarior.
per annum, & per servitium arandi unam
acram terræ ad seminandum frumentum,
**quod valet xij. d. per annum. Et per ser-
vitium metendi prædictam acram & cari-
andi in Grangiam Prioris apud Oppinton**

blada ejusdem acras, quod servitium exten-
dit per annum ad xij. d. Et per servitium
arandi dimidiam acram terræ ad seminan-
dum frumentum, et dimidiam acram terræ
ad seminandum ordinum, et utramque dimi-
diā acram metendi et ligandi, quod qui-
dem servitium extendit per annum ad ij. s.
Et per servitium solvendi unam denar.
et obulum ad falcandum pratū Domini
Prioris, & per servitium cariandi unam ca-
rectatam & dimidiam feni in Grangiam
Prioris apud Oxpinton, & valet per annum
iij. denar. Et per per servitium faciendi
duo averagia de Oxpinton usque Mepham per
annum, & valet opus viij. denar. Et per ser-
vitium claudendi tres petidas circa
Gardinum Prioris prædicti apud Oxpinton,
& valet opus iij. d. per annum. Et per ser-
vitium duarum gallinarum & xl. ovorum,
et valet per annum vj. d. pretium gallinae
ij. d. Et per servitium faciendi sciam ad
curiam prædicti Prioris de Oxpinton, de tri-
bus septimanis in tres septimanos. Et dicunt
quod prædicta Isabella obiit per tres annos
elapsos,

*elapsos, et quod præteragia à tempore mortis
prædictæ Isabellæ usque in hodiernum diem
sunt l. s. j. d. ob.*

Summatotius per annum —— xvij. s. —— viij. d. — ob.

Unde de redditu off. —— x. s. —— xi. d. —

De Consuetudinibus —— v. s. —— ix. — ob.

Servitia Tenentium de Rokinge ad reddi-
tum posita.

Memorand. quod in festo S. Michaelis, Scriptura 17.
Vide pag 60.
anno Dⁿⁱ Mcccxxxix. regni vero Regis Ed-
wardi xvij. Prior et Conventus ecclesiæ
Christi Cantuar. relaxaverunt Tenentibus
suis de Rokinge, viz. falcationem, levatio-
nem, cariagum, et tassationem prati. Item
cariagum, impletionem & sparsionem fimo-
rum, facturam cratis, & Burghyard. Item Burghyard.
averagia apud Berleham. Item fotaveragia.
Item messionem & herciaturam & collectio-
nem stipularum. Item cooperturam grangiar-
um, & tonsionem ovium. Et pro ista rela-
xatione, prædicti Tenentes solvent annuatim
ad manerium prædict. in festo omnium San-
ctorum, & ad Purificationem beatæ Mariæ

redditus subscriptos pro equali portione-
vix. Robertus le Frode de xij. acris &
dimid. iiij. s. ij. d. ob. Timberdansland pro
viginti sex acris iiiij. s. ij. d. ob. Terra
Heymund pro novem acris iiiij. s. ij. d. Terra
Juliani pro viginti acris iiiij. s. j. d. ob.
Stameresland pro undecim acris ij. s. viij. d.
Terra Smalspon pro tresdecim acris ij. s.
iiij. d. Terra le Bred pro octo acris & di-
mid. xvij. d. &c.

Relaxatio servitiorum & consuetudinum
Tenentium de Mepham, pro annuo red-
ditu solvendo.

Et apura 12.
Vide pag 6. Universis pateat per presentes quod in
festo Nativitatis Domini, Anno ejusdem
Mccccvj. Regni vero Regis Edwardi filii
Regis Henrici xxxv. Henricus Prior et Ca-
pitulum ecclesiae Christi Cantuar. remise-
runt et relaxaverunt hominibus et tenenti-
bus suis de Mepham quasdam consuetudines
et servitia pro annuo redditu quinquaginta
septem solidor. trium denarior. et unius oboli
eisdem Priori et Capitulo in predicto ma-
nere

nerio suo de Mepham in festo Apostolorum Petri et Pauli annuatim solvend. in formâ subscriptâ, viz. Tenentes de Gavellond de Gavellond. octodecim Jugis, pro cariagio triginta et sex carectat. feni de prato de Bedhamme apud Clyve usque Mepham, quindecim solidos, viz. pro qualibet carectat. quinque denarios. Et unum dimidium jugum est in Dominico. Item pro averagiis tresdecim solid. & quatuor denar. Item pro clausura circa blade duos solidos, undecim denar. & obulum. Item pro clausura circa Curiam quæ dicitur Burghyard, viginti duos denar. obulum Burghyard. & quadr. Item Tenentes de sex Jugis & dimid. de Inland pro trituratione & ventilatione. triginta & quinque quarteriorum frumenti, novem solid. quinque denar. obulum & quadr. viz. pro trituratione cuiuslibet summæ tres denar. & pro ventilatione unum quadr. Item pro trituratione & ventilatione septemdecim grossarum summarum et dimid avene, tres solid. tres denar. & unum quadr. viz. pro trituratione cuiuslibet summæ duos denar. et pro ventilatione unum quadran. Item pro opere farcelandi

octodecim denar. Item pro opere rassandi in
autumpno tresdecim denar. Item pro sumis
spargendis sex denar. et obolum. Item pro
xvij. (a) Cladibus faciendis ad Ovile sex
denar. Item pro cibo Prioris querend. et pro
servitio quod dicitur Worderinde, et pro po-
mis frangendis duodecim denar. Item pro
clausura circa blada, quæ dicitur Swinhey,
duos solidos, decem denar. et quadr. Item
pro clausura xvij. perticarum et quinque pe-
dum muri infra Curiam ab ostio Aulae ver-
sus Portam Curiæ xvij. denar. et obol. Item
pro grangia cooperienda duos solid. et sex
denar. In quorum omnium testimonium, si-
gillum commune prædictorum Prioris et Ca-
pituli, et sigilla Walteri de Northwode, Jo-
hannis de Ilbergh, Johannis de Valifeld, Hen-
rici de Hildenacce, Petri de Hildenacce, et Jo-
hannis de Prestwode, pro se et omnibus aliis
Tenentibus de Gabellond, ad requisitionem
ipsorum: et Johannis de Pettesfeld, Johan-
nis de la Dene Capellani, Henrici de Lomere,
Alfredi de Northwode, Henrici de Northwode,
et Walteri Ive, pro se et omnibus aliis Te-
nentibus de Inland, ad requisitionem corun-
dem

(a) f. Cl. yū,
vel Clatis.
Vid. Spelm.
Glossar. in
voce.
Worderinde.

Swinhey.

dem, huic scripto circographato alternatim
sunt appensa. Acta sunt hæc anno supra-
dicto.

Breve Regis (*W^m jⁿⁱ*) pro terris monaste-
rii S. Augustini Cant. alienatis recuper-
randis.

Will^{ms} Dei gratiâ Rex Angliae, Lan-
franco Archiepisco Cantuar. &c. Salu-
tem. Mando & præcipio ut faciatis S. Au-
gustinum & Abbatem Scotlandum reseisire
burgum de Fordwich, quem tenet Haymo
vicecomes, omnesque alias terras quas Ab-
bas Egelsinus fugitivus, mentis lenitate, vel
timore, vel cupiditate alicui dedit vel ha-
bere concessit. Et si aliquis, &c.

Scriptura 13.
Vide pag. 63.

Charta *W.* Regis *jⁿⁱ* de restituzione ablato-
rum in Episcopatibus & Abbatiis totius
Anglie.

W. Dei gratiâ Rex Anglorum, L. Ar-
chiepiscopo Cantuar. & G. Episcopo Con-
stantiarum, & R. Comiti de Ou, & R. fi-
lio.

Scriptura 14.
Vide pag. 63.

lio Comitis Gil. & H. de monte fortis, suisque aliis proceribus regni Angliae, Salutem. Summonete Vicecomites meos ex meo precepto, & ex parte mea eis dicite, ut reddant Episcopatibus meis, & Abbatibus totum Dominium, omnesque dominicas terras quas de Dominio Episcopatum meorum & Abbatiarum, Episcopi mei & Abbates eis vel lenitate, vel timore, vel cupiditate dederunt, vel habere consenserunt, vel ipsi violentia sua inde abstraxerunt, et quod hactenus injuste possederunt de Dominio ecclesiarum mearum. Et nisi reddiderint, sicut eos ex parte mea summonebitis, vos ipsoe velint nolint constringite reddere. Quod si quilibet alius, vel aliquis vestrum quibus hanc justitiam imposui, ejusdem querelæ fuerit, reddat similiter quod de Dominio Episcopatum vel Abbatiarum mearum habuit, ne propter illud quod inde aliquis vestrum habebit minus exerceat super meos Vicecomites vel alios quicunque teneant dominium ecclesiarum mearum. (b) quod præcipio.

(b) scilicet.

Breve Regis in subsidium Villanorum Abbatis S. Augustini Cantuar. se gravari querentium in taxatione 10^{ma} & 15^{ma}.

Edwardus Dei gratiâ Rex Angliae, Domi-
nus Hiberniarum, & Dux Aquitaniarum, Taxato-
ribus Decimae & Quintadecimae in Comi-
tatu Cantuarie, Salutem. Ex parte dilecti no-
bis in Christo Abbatis S. Augustini Cantuar.
nobis est ostensum, quod vos omnia bona &
catalla Villanorum ipsius Abbatis in Comi-
tatu predicto, non deductis redditibus, ser-
vitio & custumis quae iidem Villani præ-
fato Abbatii reddunt & solvunt annuatim,
quæ quidem redditus, servitia & custumæ
inter temporalia ipsius Abbatis spirituali-
bus suis annexa ad decimam sunt taxata, et
inde idem Abbas decimam solvit, taxastis, et
decimam & quintamdecimam predictas in-
de levar intenditis ad opus nostrum, in ip-
sius Abbatis et Villanorum suorum prædi-
ctorum præjudicium et gravamen: Nos no-
lentes prædictum Abbatem, pro eo quod ipse
de temporalibus spiritualibus suis annexis

- 4 -

decimam solvit in hac parte indebitè prægravari, vobis mandamus, quod deductis redditibus, servitiis, et custumis Villanorum prædictorum, quæ inter temporalia prædicti Abbatis spiritualibus annexa ad decimam sic taxantur, et de quibus idem Abbas decimam solvit, sicut prædictum est, residua bona et catalla eorundem Villanorum taxari, et dictas decimam et quintam decimam inde ad opus nostrum levari faciatis, prout alias in hujusmodi taxationibus fieri consuevit. Et si quid per vos à præfatis Villanis indebitè levatum fuerit, id sine dilatione restitui faciatis eisdem. Teste meipso apud Pontefractum primo die Martii, anni regni nostri septimo.

Charta de Homagio facta pro terrâ de Gavelkind, sicut de Villenagio.

Scriptura 16.
Vide pag 73.

Sciant omnes tam posteri quam præsentes quod W^mus filius W^m de Elmton, & Radulfus frater suus diviscerunt hereditatem suam de duabus villis Burne et Wilrintune, sicut de Gavelkende in Curia S. Augustini,

in

in præsentia Domini Rogerii electi ejusdem ecclesiæ & plurimorum Monachorum & Laicorum: & Radulfus relevavit in eadem Curia partem suam. Ipse vero Radulfus de medietate istarum duarum villarum fecit homagium Abbati sicut de Villenagio, & reddet de Burne gablum quinquaginta solidi. quatuor terminis anni, dominicâ viz. Palmar. xxij. s. vj. d. in Nativitate S. Iohannis tantundem, ad festum S. Michaelis tantundem, ad festum S. Thomæ ante Nativitatem Domini tantundem, & tantundem servitii quantum ad idem Villenagium pertinet, faciet. Similiter de medietate de Wilrinton, idem Radulfus alios quinquaginta solidos, eodem modo, et eisdem terminis reddet cum servitio. Ego autem R. Dei gratiâ electus beati Augustini Cantuariensis ejusdemque loci conventus, hanc partem suæ hereditatis præsenti chartâ et sigillo ecclesiæ nostræ eidem Radulfo confirmavimus. His testibus quorum nomina subscripta sunt, Willmo filio Nigelli, Elya de Silingheld, Radulfo de S. Leodegario, Radulfo de Treve, Eylgaro de Ellure, Hugone Cosin, Stephano

de Renardinton, Alano de Reading, Daniele
de Wyvelesberhe, Hamone de Solforde, Ha-
mone de Aldelose, Alano de Leigh, Rogero de
Wadenhale, et pluribus aliis.

*Chirographum perpetuum de Nuptiis contrahendis, &
Dote constituta.*

Scriptura 17.
Vide pag. 76.

(a) Conditionally (and upon this consideration) that she accept of his speech, i. e. consent to the agreement, or contract here made, and on these terms will become his wife.

(b) witness.

(c) agreed.

(d) presence.

Here appeareth in this writing the agreement that Den fratre h̄on by Jan Geppite ha foneyand þe Godwine made with Byrhric when he his daughter Godpine pophte þis Byrhric þa he his dohter wooed, that is first that he gives her one pounds aȝtogeð, þiȝ ærest þe gæf h̄ine anes punder weight of gold (a) so as she his agreement re-geþifra ȝoldes þis þonne he beo his spouse un-ceived, & he giveth her those lands at Strete with tenpence, þe ȝeuþe h̄ine þær landes at Strete mis all that thereto apperteineth, & in Burwaremerh eallan þon he ȝæsto heƿð, ȝon Buparhamere one hundred and fifty acres, and (b) thereto thitty oðer heale hund accea, ȝ ȝæsto ȝnitesig oxen, & twenty cowes, & ten horses, & ten bondoxna, ȝ tƿentig cuna, ȝ tƿyn hopp. ȝ tƿyn ȝeop-men. This was (c) spoken at Kingstone before Cnute men. Þis þas gespeciell ȝeorgestune beforean Cnute king in Living the Archbishops (d) witness, & in cincȝ: on Lyfinges aƿcebi:opeþ ȝepitnesse, ȝon the Covens at Christ-church, & Aelfmeres (the) Abbot hƿipedes ȝe ƿiſteſ eƿean, ȝ Aelfmeper ab-hats, and the Covens at S. Augustine, and Aethel-loses, ȝ þær hƿipedes ȝe S. Augustine, ȝ Aelf-wines (the) Sheriffe, and Sjredes th'elder, and God-pineſ ſaƿe geƿefan, ȝ hƿipedes calbar, ȝ God-wines

wines Wulseyes sonne, and Aelfsy child, and Ead-
 jines Wulfeages sunu, I Elfrige eido, I Ead-
 mer at Burham, and Godwine Wulfstanes sonne, and
 me: at Bupham, I Godpine Wulftahes sunu, I
 Charles the kings (c) knight, and when men that mai- (c) Minister.
 kan þær cinges cuht, I þa man þe mæ-
 den fethd to Brightling, then went of all this (f) in (f) for surety,
 van fette at Byphelngan, þa eode þyres ealler on
 pledge Aelfgar Syredes sonne, and Freith priest of
 boþh Elfyan synodes sunu, I Frenþ ppeost on
 Folkestone and of Dover Leofwine priest, and
 Folceftane I of Dorepan Leoffine ppeost, I
 Wulfsy priest, and Eadred Eadelmess sonne, and
 Fulfrige ppeost, I Eadƿes Eadelmess sunu, I
 Leofwine Wærelmes sonne, and Cenwold rust, and
 Leofpine Fæfelmer sunu, I Cenpolo rust, I
 Leofwine Godwines sonne at Horion, and Leofwine
 Leoffine Godunes sunu at Koptune, I Leoffine
 the red, and Godwine Eadgifes sonne, and Leotsun
 se neade, I Godpine Eadgeope sunu, I Leoffunu
 his brother. And which soever of them longest liveth
 hiȝ broðer: I ƿya hƿæðen heona leng libbe
 (g) take all (h) possessions aswell that land that (g) schre.
 fo to callan ætan ƿe on ðam lande þe (h) inheritan.
 I to them give as every thing. This thing is knownc ces.
 ic heom gæf geo ælon hingan. Ðyssa hinga is gece nære
 (i) to all *valiant men in Kent, & in Suflex of Thanges (i) of each, &
 ælc dohing man on Kent, I on Suffrekan on ðe genan every.
 and of Churles, and this writing is (l) three-fold, (l) tripartite,
 I on ceoplan, I hýrra geppita lind ƿeo.
 one is at Christ church, (m) another at S. Augustine, (m) a secound,
 an is at epistes cýcean, oðer at S. Augustine,
 the third hath Byrthric himself.
 ƿyse heþð Byrthric self.

*Testamentum Ethelstani Etheling, filii regis Ethelredi,
quo (inter alia) contulit Ecclesia Christi Cantuarie,
manerium de Holingburne, anno Christi 1013.*

In God Almighties name I Ethelstan Prince
On Godes Almighties name ic Ethelstan Etheling
make knowne in this writing how I my substance &
gespoteli on hiȝen geppate hu ic min ape I
my possessions given have for Gods (n) love &
min ege Gejunnen habbe Gode to loue I
my soules redemption, & my father Ethelredes
munpe faule to alijednesse, I mine fader Ethelredes
king that I it of (o) earned, that is first that I
kinger he ic hit et Geþinobe, he t is ærest he t ic
consent that man (p) set free every forfeited (q) surety
gan he man Geþey echne rice veſteman
(r) that I by (s) promise (t) ought. And I give in
he id on speche oghte. And ic gan in
with me where I me rest to Christ & S. Peter those
mid me hep ic me neſty Cryste I S. Petre þar
lands at Eadburghberi which I bought of my fa-
ther at Eadburgberi. he ic bogte at min va-
ther(u) with two hundred marks of gold by weight,
deþ mid tuam hund mancure golde be geþihte,
& (x) with five pounds of silver, & that land at Mer-
I mid vii pund geluper, I þet land at Meþ-
lefian which I bought of my father (y) with two
lefan he ic bogte at min vader mid þriðe
hundred marks and a halfe of gold by weight, & that
healf hund mancuren golde by geþigde, I þet
land at Mordune which my father me to let I give into
land at Mordune he my vader me to let ic gan into
that

(n) glory.

(o) obtained.

(p) set at li-
berty.

(q) pledge.

(r) Forē mar-
cipia. Vide
Dictionar.

mostr. in voce

pīte-deoy.

Spelm. Glos-

ſar. reib. De-

meſtium, pag.

222, col. 2, 1

Item Concil.

p. 403. & Mait.

Paul. Add.

ram p. 243.

(t) contract.

(r) posses.

(u) for.

(x) for.

(y) for.

that place for our both soules, & I him this pray
 þane rōpe vōi unkne begne soule, I ic hine þar bidde
 for Gods love & for S. Mary & for S. Peters that it
 vōi Lōbes lufe I vōi S. Marie I vōi S. Petres þe hit
 stand mought, & that sword with silver hilt that
 standen mote, I þar rēmber mid relupene hilt he
Wolfriht made, & that gilt pouch, & that bracelet
Wolfriht wroghte, I þane ȝelben veteles, I þane begh
 which **Wolfriht** made, & that drink-horne that I
 he **Wolfriht** wroghte, I þane spenç hōsni he ic
 ere of that **Covent** bought at **Ealdminster**. And I
 eȝt at þan Dīpte boȝte on **Calomenſtpe**. And ic
 will that men take that money which **Athelwolds**
 yille þet man name þet fye he **Abelpolber**
 widow me ought to (z) pay which I for her ere (z) yeild.
 I ar me oȝt to ȝelbenne he ic for hine en
 paid have, & dispole it **Elfsy** bishop to **Eald-**
Gerhoten habbe, I biceþe **Elfriȝe** biscope into **Calbe-**
minster for my soule, that is twelve pounds (a) by (a) numberd.
 menſtpe vōi minne soule, þet syns twelf puns by
 tale. And I give to Christ-church in Canterbury
 tale. And ic gan into ep̄ister cheſiche on Cantƿapebeni
 those lands at Holingboume and those which thereto
 þer londes at Holingboume I þar he þærto
 appertaine, except that one plough-land that I to Si-
 liht, buten þar ane ryolinge he ic Si-
 liht given have. And those lands at Garwaldin-
 genþ geunmen habbe. And þar londes at Rypalbin-
 tune, & I give those lands at Ritherfelde to the nuns
 tune, I ic gan þar landes at Rypalbinde into nunnen
 minister of Saint Mary (b) gratis, & one silver (b) freeþy
 menſtpe reynte Marie þanke, I enne relupene
 great piece of five pounds, & to New-minster one
 micle of vif punden, I into Nieremeneſtpe enne
 silver.

silver basin of five pounds in that holy Trinitas reliquene bpen of viij. punds on hanc halge bpinne se name that the place is dedicated to. And I give to namen he ryc scope is Fopholi. And ic gan to

(c) Crucifix. Shafesbury to that holy (c) rood & to Saint Edward Septerday to hanc halge node I to reyate Edwars those vi. pounds which I to Edmund my brother hanc vi. punde he ic Edmund mine broder (d) committed have. And I give to my father Echel-

(d) made. known. geoffred habbe. And ic gan mine vader Echel-
(e) saving. sed King those lands at Cealtune (e) except thosc
pas ringe þar londes at Cealtune butea þan eight hides which I to Aelmer my Minister given
egtenhoven he ic At linesse mine knigte geunnen
have. And those lands at Northtone, & those lands
habbe. And þas londes at Nortone, I þas londes
at Mulfinton, & those silver hilted swords which
at Quaintone, I þas relipe hiltene spader he
Wlkytel possefeth, & that brigandine that with Mor-
ylkytel ahre, I hanc bpenien he mid Mon-
kere is, & thole horses that Thutbrand me gave, &
keperis, I þas horser he þurhans me das, I
those white horses which Liefwine me gave. And I
þas hpirer horser he Liefwynne me das. And ic
give to Eadmund my brother those swords which
yan Edmundus mine broder þas spader he
Offa King enjoyed. And those swords with the hol-
Oppa King oþte. And þas spader mid þam per-
lowl-hills, & one javelin, and one silver (f) hemmed
ted hilt, I one bhorter, I an relipe hemmed
war-trumpet, and that land which I possef in East-
bles bhorter. I hanc land he ic agte on Eyt-
angle. And those lands at Peakesdale. And I will
engle. And þas londes at Peacerdale. And ic pille

(f) tipped.

that

that men deliver every yeare one dayes (g) ferme to the (g) visit.
 þer man geleye eche gehe ane dey ferme þan
 covent at Ely of this laud on S. Etheldrichs masse-
 hiȝete into Ely of þis ape on S. Ebelonpe my-
 day & give likewise to the minister one hundred
 dey i geselle þen to manynþe an hundred
 pence. & feed there on that day an hundred
 þaneget. I geþe þen on hanne dey an hund-
 ryde. Be ever this almes delivered yearly. (i) oþer (h) needy.
 þeþine. I y eue t y elmerre gelert ge þamliche oȝe (i) possesse,
 the land he that (k) oweth, whilc Christendom stan-
 land. To be oȝe he hysle christendom I don-
 deth. And if he will noþer that almes performe who
 det. And geþo neilȝ be elmerre geþonþi to
 that land bath, go that land to S. Etheldrich. And
 þer land habbeþ gang re ape into S. Ebelonpe. And
 I give to Eadriȝ my brother one silver blisced sword.
 ic gan Eadriȝ mine bneþen anet riȝt hilted lond.
 And I give to Elfsy bishop one gilt (l) crofis which (l) Crucifix
 And ic gan Elfrige bishoppe ane gilt node be is
 is with Eadriȝ Syfðis son, & one black bede. And
 mo Eadriȝ Syfðes sunu. I erne placne it se. And
 I give to Elmer those lands at Hamelden which he
 ic gan Elmer þer londet at Hamelden be he
 (m) erhad. And I pray my father for God Al- (n) sometime
 en ayte. And ic biðde mine vaden von Groðer Al-
 mighies love & for mine that he that (n) give which I (n) confide
 miȝties lufe I von minen þet he þas geunen be ic
 to him given have. And I give to Godwinc Wlnothes
 him geunen habbe. And ic gan Groðine Wlnothes
 tonne those lands at Cunincune which his father (o) gaf (o) sometime
 sunu þer londet at Cunincune be his fader en
 possesed. And I give to Elfsith my (p) foster mother (p) nurse.
 ayte. And ic gan Elfsiȝ minne fader moden
 for

Appendix.

(9) so.

for her great deserving those lands at Westunc
For hys muche geapnunge has londes at Pertune
which I bought of my father (q) with thre hundred
he ic bogte at mine wadens mid hysdene halfe
marks lacking a half of gold by weight. And I give
hund mancuren golbes be ge pigte. And ic gan
to Elfwine my masse-priest thole lands at Morelve-
Elfpine mine meyre-peort has londes at Danelue-
stunc & thole swords which Wyther enjoyed. And
itune I has ryperdes he Wyken age. And
my horse with my furniture. And I give to Eyl-
mene hopres mid mine geode. And ic gan Eyl-
(10) Sewer,
seru.
merere my (r) dish thane those eight hides at Cateringe-
meje mune dijhe peyne hape ege hide at Catesinge-
tune, & one diverse-coloured stede & thole sharpe
tune. I ane rogne rwe I has rhianbede
(f) swords & my targer. And I give to Syferth thole
propdes I mine tangie. And ic gan Syferth has
lands at High-cliffe & one sword & one horle &
londes at Doggenclive I anes propdes I anes hopres I
my bowed shield. And I give to Ethelferd Stame-
mine bogede scelber. And ic gan Ehelkenhe Etame-
ren & Lyving those lands at Tywyngc. And I give
pen I Lyvynge has londes at Tyyngc. And ic gan
to Liefstane Liefwines brother what of that land-
Liefstan Liefwines broðer quatter hape land-
estate which I (t) of his brother took. And I give
ane de ic af his broðer nam. And ic gan

(c) from.

(u) sometime.

to Lyemare at Bygroue those lands which I him (u)ere
Lyemare at Bygroue has londes de ichum epe
from took. And I give to Godwine Drevelen those
of nam. And ic gan Godwine Drevelen hape
three hides of land at Little Garesdale. And I give
hysdene hide at Little Garesdale. And ic gan
to

to Edith Wynfelds sonne that sword (x) which the
 Esƿip Fynselbe runu þas rƿoder he ^(x) is marked
 hand is on marked. And I give to Elfwine my
 hand is an ȝemarees. And ic gan Elfpine mine
 minister that sword which heo me (y) sometime gave,
 cuiusq[ue] þas rƿoder he has me e[st]i ryalde, ^(y) sometime
 told.
 And I give to Elfnoth my sword white, & to my
 And ic gan Elfnoðe mine rƿorde hƿiten. I mine
 Huntsman that stede which is at Colingeregg. And
 Dicnhunte þas rƿoder he is at Colingeregg. And
 tender men of my gold to Elurith at Berton & to
 healeþe men of mine gold Eluƿide at Beſtune I
 Godwine Dƿevelen so much as Eadmund my bro-
 ther knowes that I to them of right to yeild ought.
 Þer pot þat ic heom mid nihte geloen oge.
 Now thank I my father with all humility in God
 Nu þonky ic mine vader mid alre cmodneſſe on Gode
 Almightyes name for that answer which (he) to me sent
 Almigties name þane anƿene he me ſende
 on Friday after midsummers mafle-day by Elfgar
 on ƿīdþey after midsummers merre-dage by Elfgar
 Elftanes ſon, which was that he to me ſignified by
 Elfrane june, þet þas þet he me kidde a
 (z) my fathers message that I might by Gods permis- ^(z) a message
 mines vader rƿode þa ic moſt by Godes ^{from my fa-}
 ſeligion & by his give my lands & my (a) poffeſſions as ^(a) ſubſtance
 aue I by his unnen mine ape I min egle ſpo
 to me moſt expedient ſeemed, (b) either for God & ^(b) i. e. either
 me meſt neſt hugte, aibep for Gode I ^{to divine or}
 for the world. And of this answer is to witneſſe
 for vppole. And þisſer andþer is for geƿitneſſe
 Eadmund my brother & Elfsy bishop, & Byrhtmer
 Eadmund my brōðer I Elfrige biskepe, I Byrhtmer

Abbey & Elister Elmiches sonne. Now pray I alle the
 Abot & Culmep Clapicestey runs. Ne bidde ic alle he
 (c) testament. wife then which my (c) will shall hear read either
 ryben be mine quyece gehrye's pece eyden
 (d) Clerks. (dy) Clergy & (e) Laity, that they be of assistance that
 (e) Laity gehooebe. I leysore, let hi ben on valume her
 (f) testament. my (f) will stand may, ffor my father giveth leave
 my cyde reoncen mōto rife mine vadey gelisou
 (g) testaments for my (g) wills standing. Now declare I that all
 on mine quyece ryent. Nu ryke ic her alle
 thos things which I to God unto Gods church &
 bo I myng he 16 to Gode into Godes cepechen I
 Gods servaunts given have he don for my dear
 Godes leuen geunnett habbe ry gebon von minc lieuer
 fathers Roale Etheleard King & for mine & Elfrith
 faben rāne Ehelred myng I for mine I Elfrid
 my glānd-mother thus me fadd, & for all theirs that
 mine elde-mōden pe me rebbe, I for alre have he
 me to this (h) goods helped. And he that this
 me to hys goden gefilten. And re he hysne
 (i) testament. (i) will through my thing breuketh her him give an ac
 quyece hys eny hys spente habbe him p̄i
 comp thereof to God Almighty, & to Saint Mary,
 God Almyng gemene, I my reuate Marie,
 & to Saint Peter, & to all thole which Gods name
 I my ryghte Peter, I my alle bo de Godes name
 do minde.
 thake.

Charters

Charia Libertatum Ecclesia Christi Con-
cessar. per Regem Henricum
primum. atque illa in capitulo tunc
varius multitudine sententias suas non solum

H. Dei gratia Rex Anglorum; Episcopis, ^{Scriptura 19.}
Comitibus, Proceribus, Vicecomitibus, ca-
terisque suis fidelibus Francis & Anglis in
omnibus Comitatibus in quibus Archiepisco-
pus Radulfus & monachis ecclesie Christi
Gantuariae terras habent amicabiliter Salu-
tem. Notum vobis facio me concessisse omnes
omnes terras quas tempore Regis Eadwardi
cognati moi, & tempore Willielmi patris moi
habuerunt & Baca & Worm on Strand &
& Streame, on Alode & Felde, Tolnes & Teames,
& Grithbreers & Wamstone, & Foxstalles, &
Infangenes viuides, & Slemen frumenta super
suos homines infra burgos & extra in tan-
tum & iam pleniter sicut proprii ministri
mei exquirere debent. Et ottam super tot
Thegenes quae eis concessit pater meus. Et ^{Thegenes.}
nolo ut aliquis hominum se intromittat nisi
ipsi & ministri eorum; quibus ipse commit-
tere voluerint, nec Francus nec Anglus:

Appendix.

propterea quia ego concessi Christo has con-
suetudines pro redemptione animæ meæ, si-
cūt Rex Eadwardus & pater mens antebac
fecerunt. Et nolo pati ut aliquis eas infrin-
gat, si non vult perdere amicitiam meam
Deus vos custodiat.

Thus Englished in the same Charter.

D. Hugh Goder gevul anglelandey comyngh ghetē calle
mine biscopes & mine eopleys & scipengeneuan & degenas
francis & anglisc on ðam scipan he Rawle apceb. & he
hynes at episcopescace on Cantypanebering habbaþ laos
inne frēondice. Iucky de cop þic habbe heom geunnon
þi by on alce pape lande purþe he hi hæfdon on Eðynges
kinges dage minnes meges. & on Willmey, kynge dage
minnes fædes. & raca. & roca. on ȝtbande & on ȝtpeame.
on putan. & on felban. tolney & teamer. ȝniðþreces &
hamrotes. popytealles. & infangenes. hones. & platen
feomde oren huse aȝen man binnan buȝtan & butan. ȝpa
full & ȝpa forþ ȝpa mine agene picnes he hit recan recolan.
& ouer ȝpa fela degenas ȝpa ic heom to gelezen hebbey
& ic nelle þenig man enig ȝung ȝær on tye buton hi. &
heope picnes he hi hit betacon ȝillaþ ne francisce ne
anglisc. forþan ȝingan he ic habbe episcop has ȝepihce
forȝeuon minne rasle to alystnesse ealysa Eðyng
kyns & min fæden ær hæfdon. & ic nelle geðauan þenig
man his to hlice be minan fullan frēondyscipe. God cop
gehealde.

[] This an-
swers not to
the Latine;
that, quot eis
concessit pater
mem; this, as
to them have
granted.

Charta

Charta consimilium libertatum Ecclesiae

S. Augustini Cantuar. concessarum per
S. Edwardum Regem.

Ego Edwardus Dei gratia Rex Anglorum, Scriptura 10,
Vile pag. 111.
& 113.
Eadsino Archiepiscopo, et Godwino Comiti,
Omibus suis Baronibus Canciæ, Salu-
tem. Sciatis me dedisse Deo & S. Augusti-
no & fratribus ut habeant eorum Data &
Socna, et pacis fracturam, et pugnam in do-
mo factam, et viae assaltus, et latrones in
terra sua captos, latronumque suæceptionem.
vel passionem, super illorum proprios homi-
nes infra Civitatem et extra, theloniumque
suum in terra et in aqua, atque consuetudi-
nem quæ dicitur Teames. Et super omnes
Allodiarios suos quos eis habeo datos. Nec Allodiarii.
volo consentire ut aliquis in aliqua re de his
se intromittat, nisi eorum præpositi quibus
ipsi hoc commendaverint, quia habeo has
consuetudines Deo datas et S. Augustino
pro redemptione animæ meæ ita pleniter et
liberè sicut melius haberunt tempore præ-
decessoris mei Knuti Regis, et nolo consentire

ut.

ut aliquis hæc infringat, sicut meam amicitiam vult habere.

Epistola Ganfridi Supprioris & Monachor.

Ecclesiæ Cantuariensis ad Regem Henricum 2. de lite inter eos & Baldwinum Archiepisc.

Scripura 21.
Vide pag. 67.
a 101.

Excellentissimo Domino suo H. Dei gratia Anglorum Regi G. Suppriori & Conventus ecclesie Christi Cantuar. fœbili & ultra modum afflictus Salutem & fœspiria fœtuum & afflictorum respicere. Cum scriptum sit Gloria in excelsis Deo, & in terra pax hominibus bonæ voluntatis; ut pro bona voluntate in terris habita gloriæ habentis in caelis, Sororitati vestre quæ in nullo offendisse credimus vel recognoscimus, supplicamus, ut si quid odii aut rancoris conceperitis adversus nos aut ecclesiam Cantuar. odio personæ alicuius aut operis pressens temporis vel præteriti, quod nos debeat respicere, pietatis incusæ remittatis, attendentes innocentiam nostram, nec vindicantes aliorum peccata in nobis. Si peccavimus

Ecclesiæ Can-
tuariensis dig-
ditas.

sumus publicè, purissimè, sine uitio, quod
ecclesia Cantabrigiensis de quâ omnes Anglorum Re-
ges, non solum fidem Christi, sed & coro-
nam Regum suscepserunt, quæ usque mode li-
bera erobat, ne capiatur & concuteatur ab
hominibus, cuon sit mister omnium in regno
Anglie manentium. In Christo Jesu nobis
dicionis, timemur ne nos itates multæ &
male subito ontantur, quarum principia et si
nos sensimus, forsitan exitios alios quam nos
tanget nec transire permettot immunes, sed
involveret. Qui hanc novitatem non admirer-
tur, quod Dominus Archicopædus dicit
nos debere de eo terras & possessiones no-
stras tenere cum jam per quingentos annos
& eo amplius, à tempore scil. magni Theo-
doti, qui terras partitus est, & utriusque parti
suam portionem assignavit, Conventus in
pace possederit portionem suam, & liberè
administraverit, quod & charta Regum &
Pontificum plenius attestantur, ex quorum
tenore perspicuum videtur est, quod usque ad
hac infelicitatis tempora, Archiepiscopus
nihil juris vel dominationis plus habebat in
terris Monachorum, quam Monachi in terra.

Notæ.

Archiepiscopi. Et ne super hoc quisquam
 dubitet, proferantur in medium charta S.
 Edwardi Regis & Sancti Anselmi Archiepi-
 scopi, & alio multo Regum & Pontificum.
Quod autem dicitur Lanfrancum dividisse
terras, ideo est, quod cum Normanni, capta
Anglia, omnium ecclesiarum terras occupas-
fent, Rex Will. ad instantiam Lanfranci,
eas resignavit. Lanfrancum vero singulis
ecclesiis reddidit quod antea possederant, sibi
autem quod ante cessorum fuerat suorum re-
tinxit. Quod autem tempore Lanfranci non
fit facta terra divisio, testantur chirogra-
phia ante tempora beati Dunstani facta in-
ter Archiepiscopos & Monachos de concam-
bis terrarum multarum: sed & hoc atter-
stantur scripta vetustissima qua lingua An-
glorum, Landhokes, id est, terrarum libros,
vocant. Quia vero non erant adhuc tem-
pare Regis Wilhelmi milites in Anglia, sed
Threnges, praecepit Rex, ut de eis milites
fierent ad terram defendendam. Fecit au-
tem Lanfrancus Threngos suos milites:
Monachi vero non fecerunt, sed de portione
sua ducentas libras terrae dederunt Archi-
episcopo,

Lan. b. kes.

Th. eng. 2.

episcopo, ut per milites suos terras eorum
defenderet, & ut omnia negotia eorum apud
Curiam Romanam suis expensis expediret.

*Q*uæd adhuc in totâ terra Monachorum nul-
lus miles est, sed in terra Archiepiscopi.

Terram tamen ducentarum librarum adhuc
babent Archiepiscopi: pro quibus omnibus
valde miramur, quod vel talia dicit, vel
quod assensum ei præbetis, quod vestrâ au-
thoritate & nomine vestro, per ministros
vestros res & possessiones nostras invadit,
cum nichil ad eum spectent, set nos tenean-
mus post Deum in capite de vobis, sicut &
ipse: quod manifestum est, decedentibus Ar-
chiepiscopis, quia terræ eorum statim confi-
scantur, à seculo autem inauditum est, quod
possessiones nostræ confiscatae fuerint aliquo
tempore. *Q*uapropter supplicamus, ut ma-
turius pro Deo dum potestis hæc corrigi fa-
ciatis, cum forte tunc (a) velitis, cum non (a) Forte,
(b) potueritis. Valeat.

(a) Forte,
veleth.
(b) potueritis.

*D*onatio Wolgithæ de manerio de Stilled, A.D. 1046.

Here appeareth in this writing how Wolgith gives Scriptura 21.

Dyen ypolet on þisen geppide hu Folgit gan Vide pag 85.

Appendix

Her substance after her departure, which to her the Al-lame King enten hys vpon her, he hym selfe Al-mighty God gavc in life to use, that is then first myght Gos gube on live to bracene, be itis hanne euer to my Lord his right Heir. And I give that land mine Lhouende hys regre de met. And ic gan beg land at Stistede (a) by Gods (b) witnesse & my friends.

(a) with. (b) testimony. at Stistede a Lodes geijtene he I mine vrienden
(c) i. e. ad vi. to Christ-church to the Monks for (c) sustenance,
cum.

into Chyrche-chephe ha Muncen to wortpe,
on this condition that Elskitel & Kytel my children
on hanne gehebe hec Elskitel & Kytel mine beaigne
use those lands for their (d) dayes, & afterward go
bruce har lader hyne beg, I sibben gang
that land to Christ-church without any deduction
þis land into Chyrche-chephe buden etches he apenteale
for my soule, & for Elsines my Lords, & for
yon mine saule, I von Elsines mire Lhouender, I up
all my children, & be halfe the men free after their
alre minne bieyne, þy by hauis þe men vpye after hys
(e) dayes. And I give to the church at Stistede

(e) deaths. dayes. And ic gan into hanne cheneche at Stistede
(f) together. (f) besides that which I in life gave Eldemersland. &
wch that.

(g) withall. (g) thereto Hyelken, þat those be in all fifti acres in
Anot (a) Jessco Dyeken, þet hen ryallor vnyt ekener on
(h) champion (h) field after my departure. And I give to Wolk &
veldeszen mine vpon her. Ans de gantos Wold þy
Kytel my sonnes that land at Walsingham, & at
Kytel minen father þet land at Walsingham, þat
Charlton, & Herlingham. And I give to my two
kaplains, þy Deplingham. And ic gan uner þam
daughters Gode & Bote Sexlingham & Summertede
vogtepen Lode þy Bote Sexlingham. þy Sumpleden-

ton,

ton, &c to the church at Sumerl. sixteene acres
 tune, I into hape che peche a^t Sumpsil. sixteene ekfis
 of land, & one acre of medow. And I give to Ealbyth
 lander, Jenne ekes me. And ic gan Ealgythe
 my daughter that lander Chenteker and at Athford,
 mine dogter her land at Eheptekne I ad Esseterwold,
 and the wood which I laid thereto. And I give to
 I Jane robe he i le-yeoe pento. And ic gan
 Godwine Earle and Harald Earle Frichton. And I give
 Lodpinz Eosle I Danals Eosle Fniȝdune. And ic gan
 to Christ-church to Christ's altar one litle
 into Chirch-chesche to Chirch rewest ane littene
 gilt (i) crosse and one carpet, and I give to S. Ed-
 geldene robe I ane rettigel, I to gan S. Eb-
 mund two bened horns. And I give to S. Ethel-
 mund tƿegen gebones horns. And ic gan S. Eble-
 dith one wolleyn kyrel. And I give to S. Osyth
 scribe ane illese kyprel. And ic gan S. Oryfe
 haſſe a pound of money. And I give to Austin one
 half pund feer. And ic gan S. Austin ane
 carpet. And he that my (k) testament bereaveth
 fethered. Abs le be minn quide be nyaw
 which I now (l) ordeneid have (m) by Gods (n) te-
 be ic mi bequea-^(l) den habbe a Lodey, ge-
 stimony, bereaved let him be of there earthyn joyes,
 incresse bequea-^(m) des he rope pire en dicer m pger,
 & cut off him the Almighty Lord which all creatures
 fashione ginge be Almighty Dingcen be alle thepe
 treated & made from all (o) holy mens communion
 Kethop I ge noȝte ynam alne haldeine ge wenette
 (p) in Domelday, & be he delivered to Satam the De-
 on Domercay, I by he be tagte Satane Jane Die-
 Vill & all his cursed companions into Hell bottome, &
 fle I alle his arangese grefen into helle grunde, I
(k) will.
 (l) bequea-
 (m) wiðo
 (n) witnes.
 (o) Saint.
 (p) at.
 (q) ass. (u)

(q) be tortur- there (q) perish with Gods (r) deniers (l) without in-
ed. jen. acuelm mid Godes mynaceo buze ge-
(x) reprobates. tennission, & mine hexes never to trouble (l). Of this
(l) Or, Except be desir from tyme, I mine infrenemen neuer ne aruenche. Disres
molesting mine
hers. is for wiennesse Edward King & many others.
it to geþtænne Edward King I manie oþre.

Donatio terrarum apud Apoldore, Orpton, Pallstre, Wer-
borne, Willerham, ecclesia Christi Cantuarie per
Edium Presbyterum, de consensu Cnus Regis & Alfg-
ise Regina, ann. 1032.

Scriptura 13.
Vide pag. 120.

(r) by.

(l) dispose.

(l) condition.

(u) cayles.

(x) i. e. en-
sirely.

Here appeareth (r) in this writing how Cnut King
Den tyme lab on þysan geƿitne hu Eadw cung
& Alfgite his Lady gave to Eadwy their Priest
I feligru seo hæfðige geuhan Eadwige heora ppeort
when he turned monk that he might (l) convery that
ða be tecynode to munice þe morte ateon
land at Apoldore as to himselfe most pleasing were,
land at Apoldore ƿra him tyl an leofast ƿene
Then gave he it to Christ-church to Gods servans
þa realbe he hit into Eriyter-cypican & Godet Acopum
for his soule, & he it bought thar of the Covenanter his
for his rati, I he hit ȝebohte þat þam Eadwæs his
dayes & Edwines with fower pounds, on that (l) con-
dag I ȝepine mid people punban, on þe con-
tract that men deliver every year to Christ-church
ƿyrde þ man gelvite alle geselle into Eriyter-cypican
three weigs of cheese from that land, & three (u) bunt
111. ƿesa cyter of þam lande, I ȝepo ge-
dles of Eales, & after his dayes & Edwines go that
bind ȝies, I æfter his day I ȝepine ȝange þ
land into Christ-church, with meat and with (x) mea-
land into Eriyter-cypican, mid mate I mid ƿaillan
even

even as it then(y) increased is, for Eadsies soule, and (y) improved.
 eal þa hit henne, gegeboð ry for Edwines rafle, ¶ he boughte that land at Westhorne of the Covent, for
 he gehohte þ land at Yenhamnan æt þam Diſebe
 his dayes and Edwines also with fower pounds, then
 his dæg ¶ Edwines eac mid feopen pundan,anne
 gooth that land forth with the other after his dayes &
 gab þ land forð mid þam oþrum æfter his dæg ¶
 Edwines to Christ-church with the (z) crop that (z) stock.
 Edwines into Lymber-clycan mid þære walpe he
 there then on is, & that land for his dayes at Berwick
 han henné on ri. ¶ þ land on his dæg æt Benwick
 which he obtained of his Lord Cnute king, & he
 ðe he gecanode æt his hlaſond Cnute cýng, ¶ he
 gives also those lands at Orpington in his dayes for
 geann eac þær lander æt Ospringtune on his dæg for
 his soule to Christ-church to Gods servants for
 his rafle into Lymber-clycan þam Godes Beorum to
 (a) garment land, which he bought with eighty. (a) clothing

þe he gehohte mid hundeahtigan Scrid-land,
 marks of white silver by Hustings weight, & he gives Hustings
 mancan hylter reofner be hustinger geþihte, ¶ he geann weight.
 also those lands at Palstre & at Wittresham after
 eac þær lander æt Palstre ¶ æt Sibricehamme æfter
 his dayes & Edwines forth with the other to Gods
 his dæg ¶ Edwines forð mid þam oþrum þam Godes
 servants for foster-land for his soule. This bequest Foster-land.
 Beorum to fordon-laude for his rafle. ¶ Differ cyder
 he giveith to the Covent on this (b) contract that they (b) condition.
 he geann þam Diſebe to þam forþyndan þi hi
 ever him well obserue, & to him faithfull be in life &
 æne hine pel healan, ¶ him hole beon on life ¶
 after life, & if they (c) with any unadvisednesse with (c) by.
 æne life, ¶ hi mid ænegan unþede
 þi
 him.

(d) condition him this (d) contract shall breake, their bands his in
 thine daye poppyng to spean, henné than be hit on
 his owne power how he afterwards his owne dispise
 his agenan gevalbe hu he shal han dit agen daceon
 wills. Of this is for wiuelle Canons, & Bisgife
 pille. Difet in to goþernewre knutwys, 3. Februry
 his Lady, & Abethnoth Archb. & Elfric Anth. &
 Ieo hertige, 3. Octobr. Apceb. 3. Februry Abb.
 the Covenat. Augustines, & Britonic young & le-
 ye bipes to S. Augystane, 3. Brithmoc geounze. Iose-
 pheric husbandman, & Thosch Thorkilles nephoy, and
 helme brigengy, 3. Iulij pynkiles no. 2011, 3. Februry
 Tom, & Alfwine priest, & Eadwold priest, and all the
 (e) tripartite King's Comsellours, and this writing is (e) threshold,
 cynges yader men, 3. Iulij ge yntalys yea 2011.
 one is at Christ-church, and one at S. Augustines,
 an is at Episcop-cyrican, 3. Jan. at S. Augystane,
 and one hath Eadly (f) with himselfe.

(f) to. I am heryd Earle mo him rygal.

F-I-N-I-S.

I have perused this learned Treatise of Gavelkynd,
 and judge it very fit to be published.

April 7. 1647.

Jas. Armacanus,

A Table, or Index

O F

The principal Contents.

A.

A Hte, <i>what,</i>	p. 84
Agium, <i>in the termination of word what signifying,</i>	p. 137
Akerland, <i>what,</i>	p. 117
Allodarii,	p. 123
Allodium, <i>the same with Boc- land, p. 88, 110. the word derived, p. 105. more properly in England since the Conquest, p. 126. proper only to the King to grant,</i>	p. 126
Alne-land, <i>what,</i>	p. 119
Affise of Mortdancester, <i>where it lieth,</i>	p. 152, 157
Aver-bred, <i>what,</i>	p. 25
Aver-land, <i>what,</i>	p. 116
Avermannus,	p. 116
B.	
Bed-rip, <i>what,</i>	p. 17
Bene-bred, <i>what,</i>	p. 17
Beneficium, <i>of same signification anciently, than Feudum</i>	

<i>of latter times,</i>	p. 102
Benerth, <i>what,</i>	p. 18
Ben-rip, <i>what,</i>	p. 17
Bere-gafol, <i>what,</i>	p. 29
Ber-land, <i>what,</i>	p. 118
Bermannus, <i>what,</i>	p. 118
Bians, <i>what,</i>	p. 18
Black-maile, <i>what,</i>	p. 34
Black-rents, <i>what,</i>	p. 34
Blank-ferme, <i>what,</i>	p. 34
Bocland, <i>what, p. 84. whence so called, p. 112. how variously denominated, p. 121 whether anciently devised, p. 89. whether otherwise alienable, p. 87, 88. the same with Allodium, p. 8, 110. retained after the Conquest,</i>	p. 121
<i>B.</i>	
Bordarii,	p. 118
Bord-land, <i>what, p. 114, 118</i>	
Bordmanni,	p. 118
Burgh-yard, <i>what, p. 22, 189</i>	
Bydel, <i>what, and whence derived.</i>	p. 20

F f

Mr.

A Table, or Index.

C.

Mr. Cambdens derivation of
Gavelkynd, p. 3
Carropero, p. 24
Carucæ procurare what, p. 18
rogatæ, p. 19
Carucage, what, p. 133
Charters, diverse of those in
Ingulphus questioned, and
how far, and why, p. 101
Chivalry and Socage, two te-
mures comprehending all the
lands in Kent, and elsewhere
in England, p. 129
Cniht, in the Saxon language,
what, p. 7
Coke, Sir Edward, his deri-
vation of Gavelkynd, p. 3
The Conquerours progress &
proceedings after his victory
near Hastings, p. 69. his
Charter of Restitution of
Church-lands, p. 68
Conquest, the times about it
very rapacious, p. 67
Contract of marriage, a Saxon
form or model of it, p. 75, 76
Coredy, what, p. 19, 20
Corne-gavel, what, p. 16
Corporations, anciently en-
frowned with lands in Gavel-
kind, p. 8
Cotarii, what, p. 116. their te-
nements changed into Gavel-
kind, p. 59
Gotland, what, p. 116
Gormani, what, ibid,

Custome, hardly left, p. 3. Be-
ginning within memory no
Custom, ibid. of Gavelkynd,
a common law in Kent, p. 44
its essential property, p. 49.
how different from Tenure,
p. 144

Cyricena-Socne, what, p. 133

D.

De rationabili parte bono-
rum, the Writ so called whe-
ther lying at the Common
Law, or by Custom? p. 78, 91
Dome, in the termination of
words, what signifying, 106
Dover-castle the Lock and key
of all England, p. 70
Drenches, what, p. 124
Drinclean, what, p. 39
Drot-dens, what, p. 117
Drot-land, what, p. 116
Drot-mannus, what, ibid
Don-land, what, p. 117

E.

Error, if settled, difficult to re-
move, p. 62. often caused for
want of alteration. ibid.
Estates, in England univer-
sally variable before the Con-
quest, and now, p. 77, 78
Ex gravi querela, the Writ so
called, where it lies, p. 3, 159

F.

Fald-Socne, what, p. 134
Fald-worth, what, ibid.
Fee, not alienable without the
Lords consent, p. 8. whether
anciently,

Of the principal Contents.

<i>anciently deuisable</i> , p. 84	Frankalmoigne, p. 40, 143
<i>naturally not deuisable, and why</i> , p. 162	Frank-fee 56
Fees, whether any in England before the Conquest, p. 102,	Freehold, whether <i>anciently deuisable</i> , 84
III. become patrimonial in many places; p. 162. what in their original, p. 108. how changed afterwards, ibid.	Frith-socne, what 133
Females, capable of succession in Gavelkynd-land, p. 7. excluded from succession with Males, p. 8	G.
Fendastra, what, p. 57	Gabella, what p. 13
Fendum, novum, & antiquum, p. 40	Gabinm, what, p. 13. terram ponece ad gabium, what, 14
Feudum, the word how ancient, p. 101, 102. derived, p. 104	Gabulum denariorum 26
Fewd (in deadly fewd) whence derived, p. 107	Gafel, gafol, gafnl, gavel, what signifying 10
Fief de Haubert, and de Roturier, p. 36	Gafolgylda 31
Filctale, what, p. 30	Gafol-hwitel 26
Fildale, what, ibid.	Gaigneurs, what 25
Fines for the enfranchising of lands, p. 59	Gavel absurdly rendered gif-eal in many compounds, 10
Fird-socne, what, p. 174	Gavelate, what 31
Fodrum, what, p. 25	Gavel-bred, what 25
Folcland, the nature of it, p. 78 See also p. 114, 126.	Gavel-bord, what 22
Folgarii, what, p. 115	Gavel-corne, what 16
Foot-average, what 116	Gavel-dung, what 21
Forgable, what 30	Gavel-erth, what 17
Forland, what 118	Gavelet what 31
Forlohone 31	Gavel-fother, what 25
Foster-land, what, 119	Gavelikendeys 33
Francus bancus 51, 178	Gavelkynd, the words vulgar derivation proposed, pag. 2. scanned, p. 6. rejected, ibid. a new etymon proposed and asserted, p. 10. the Custome so called a Common Law in Kent, p. 44. not causal of Partition in land so called, p. 44. what it comprehends, p. 48. the tenure so called almost universal in Kent, p. 44.
	Ff 2

A Table; or Index.

p.44. whether to nominate obtaining in Wales, p.53.	Ge, borrowed with the Sax- ons, p.38
whether a Tenure or a Cu- stome, p. 100. Prescription in it not good, and why, p.44	Gecynde, mis-construed by Mr. Lambard, 37
whether Socage and its Sy- nonymies, p. 55. Grants of land in Gavelkynd, p.38. when ceasing, p.51. See more in Partition, Villains,	Geneat, what 14
Gavelkynd-land, females ca- pable of it, p.7. the nature of it, in point of partition, scanned, p.42. no prescrip- tion good there, and why, p.46. liable to Works, p.57.	Gersuma, what 59
whether deviseable in Kent before the Stat. of Wills, p.151. descendible to col- leral kinred, p.7. anciently conveyed to Gilds and Cor- porations, pag.8. alienable from the proper heir, p.9. all partible land not called Gavelkynd, p.10.	Grants of land in Gavelkynd, when ceasing 51
Gavelman p.33	H.
Gavel-medy, what 20	Hade, head, hodes-hood, &c. in the termination of words what signifying 106
Gavel-noh, what 25	Hæreditaments, what 83
Gavel-ote, what 21	Hamsocne, what 134
Gavel-rester, what 22	Herelit, what, and whence de- rived, 32
Gavel-rip, what 19	Hide land, what 117
Gavel-rod, what 22	Hlaford-scene, what 134
Gavel-sester, what 23	Horse-average, what 116
Gavel-swine, what 23	Hotchpot 91
Gavel-timber, what 22	Hunig-gavel, what 28
Gavel-weirk, what 24	I.
Gavel-wood, what 23	In-average, what 116
	Ingulfus Charters, many of them questioned, and how far, and why 101
	Inheritance, the word how ac- cepted in England, 83,84
	Inheritances, in England uni- versally partible before the Conquest, and how, 77,78
	Inland, what 114,119
	K.
	Kent, with other Counties con- quered and over-run by Will.1. p.66. Servi there, p.74. also Nativi, 75
	Kind,

Of the principal Countries.

Kind, in Dutch, what, and whence derived	p. 6, 7	Leaf-gavel, what	p. 27
Knecht in Dutch, what	7	Lef-silver, what	ibid.
Knight-service-land naturally incapable of partition	48	Lef-gavel, what	ibid.
Koyghren-gyld	135	Lef-geld, and Lef-yeld, what	ibid.
Knights, whether any here in England before the Conquest	123	Liberum feodum, what	56
Kynd, in Gavelkynd of what signification	37	Lyef-geld, what	27
L.		M.	
<i>Mr. Lambard his two-fold derivation of Gavelkynd, p. 3. whereof one rejected, the other admitted, p. 5. mistaken in the construction of gecynde</i>	37	Mailer, what	p. 34
Land, all in Kent and the rowous England, either of Chivalry or Socage Tenures, p. 38. all in England, either ancient Demesne, or Frank fee, p. 57. and subject to Tenure, 1:6. descended, not alienable of old without the heirs consent, 39. purchased, alienable at pleasure, ibid. censual, not censual, 35. how many several kinds of land before the Conquest, 114. as also since	115	Mailman, what	ibid.
Landagendman, what	15	Mail-payer, what	ibid.
Land-boe, what	112	Mala, what	ibid.
Land-gabel, what	15	Malt-gavel, what	27
Land-gafol, what	ibid.	Malt-peny, what	ibid.
		Malt-shot, what	ibid.
		Manopera, what	24
		Mete-gavel, what	31
		Mirroir, the book so called, censured	104
		Molland, what	117
		Molmannus, what	ibid.
		Monday-land, what	120
		Mordancester, the Assise so called, where it lies,	152,
			157
		Mortmaine, what, 40. the tenure of it double	ibid.
N.			
Names, to be suitable with things very convenient,	11		
Nativi in Kent	75		
Neatland, what	114		
Nidering, alias Nithing; a nickname of what signification, & whence derived,	65		
O.			
Oale-gavel, what	24		
		Orde-	

Ordericus Vitalis, his relation of the Conquerors proceedings and progress after his victory near Hastings,	Some Phrases in Ingulphus ancient Charters question'd p.201
	Pictavensis his relation of the Conquerors proceedings and progress after his victory near Hastings, 69. himself the Conquerors Chaplain, and an eye-witness ib.
Ordinary, his power of distributing Inestates goods here in England, when beginning, as also in Scotland, and Normandy 79	Portloca, what 135,136
Over-land, what 119	Portfoken, what 135
Out-average, what 116	Potura, what 29
P.	Prescription not good in Gavelkynd, and why 44
Partners, how many sorts, 42	R.
Paroc, what 23	Rationabili parte bonorum, 78, & 91
Partition, in Gavelkynd-land, neither from the name, nor nature of it only, 44. nor from prescription, 46. but partly from the nature of it, and partly from custom, and what, 47. the antiquity of it, 61. whether inherent in the land, 247, 150. why more general in Kent than elsewhere, 52, 61. whether brought hither by Odo out of Normandy, 61, 81. whether continued there by composition with the Conquerour 62	Redditus albi, what, 34. bingri. what, ib.
Partition, but one property or branch of Gavelkynd, 48, 146. out of Kent whence obtaining ibid. & 54	Rewstitution, a Charter of it by the Conquerour 68
Partition of goods 79	Rip-silver, what 19
Penny-gavel, what 26	Rochester-Castle besieged by Will. 2. 64
Scotale, what 29	Rod-land, what 117
Scrude-	Romney, the Conquerours passage by it in his march to Dover 69
	S.
	Contract of marriage in Saxon, 75. the edition of it corrected, 76. Several wils in Saxon 85
	Scip, ship, in the termination of words, what signifying, 106

Of the principal Contents.

Serule-land, what	110	querour, not maintained by ancient story	75
Seilin, how delivered in the Saxons times	112	Sul-welmesse, what	132
Servi in Kent	74	Swilling-land, what	117
Servitus rusticana	127	Swinc-gavel, what	23
Sextary-land, what	119	Swine-money, what	ib.
Smichesland, what	138	Swine-panege, what	ib.
Soca, Socha, Soke, Sokne, what	132, 137	Swinhey, what	190
Socage, free and base, &c. the derivation of the word, and what it signifies, 129. whe- ther it and Gavelkynd Sy- nonimia's, &c. its original, 127. opposite to Villenage,	139	T.	
Socage-land and service, so called elsewhere in Kent ter- med Gavelkynd	49	Tainland,	128
Socagium, the distinction of it into libecum and villanum, whence	141	Tenure, all land in England subject to it, 126. how dif- ferent from Custome, 144	
Socmanni	137	Tenure, 1 by Divine service, 2 in Frankalmoigne, 3 in Fee farm, 4 by Petite Ser- geancy, 5 by Escuage ear- tain, 6 in Burgage, all So- cage, and under, 130, 141	
Sokerevi	134	Tenure in Mortmaine two- fold	40
Sokmanry	137	Tenures in Chivalry and So- cage, all lands both in Kent, and elsewhere throughout England reducible to one or other of them	129
Spelman Sir Henry, his deri- vation of Gavelkynd	3	Tenures, in Gavelkynd new- created, 9. what before the Conquest	112
Spots story (of the Kentish- mens encounter and con- position with the Conquer- our) exhibited, questioned, refuted, 63. a mere monkish segment, and why devised, 71. when he lived, 64. his commission of falsity, 63.		Terra ad gablum posita, what	14
Stigand the Archbishops de- posing for opposing the Con-		Terræ censuales, what	36
		Terra, hereditaria, 84. libe- ra, 58, 84. susanna, 118. testamentalis, 84, 86 unde- nemini respondeatur, 120.	
		Thegenes,	133
		Theines,	

W.	W.
Wainwright, what	113
Weland	114
W.	W.
Wareland, what	118
Weilreif, what	65
Were-gavel, what	58
Werk-gavel, what	26
Werk-land	37
White-rents, what	34
Wills in Saxon	85
Wood-gavel, what	26
Words in Ingoldsbur more an- cient Charters, a sort of them questioned	101
Work-land, what	115
The Writ, De rationali- tate bonorum, whether lying in the Common Law, or by Custom	78, & 91
The Writ of Ex gravi que- ta, where is lies,	153, 159
Y	Y
Yoke-land, what	117
FINIS.	FINIS.
C.	C.

